1979.

SUPREME COURT OF THE UNITED STATES.

No. 117.

JONATHAN PALMER, NATHAN'L WALDRON, BENJAMIN B. CRAYCROFT, AND WILLIAM B. FISHER, OWNERS OF THE BARQUE DELAWARE, HER TACKLE, APPAREL AND FURNITURE, APPELLANTS,

vs.

THE PHILADELPHIA AND ATLANTIC STEAM NAVIGATION COMPANY, OWNERS OF THE STEAMSHIP OSPREY.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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Gideon, printer.

THE PHILADELPHIA AND ATLANTIC STEAM NAVIGATION COMPANY
vs.
THE BARQUE DELAWARE.

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit. Of April session, 1852. No. 2.

It is thus contained:

Pleas before the honorable the judges of the district court of the United States, in and for the eastern district of Pennsylvania. In admiralty.

It is thus contained:

Be it remembered, that on the third day of September, A. D. 1850, George M. Wharton and Thomas Balch, esquires, proctors of said court, come into the said court and exhibit the libel and complaint of the Philadelphia and Atlantic Steam Navigation Company against the barque Delaware; and the same being read and filed is in the words following, to wit:

In the United States district court, eastern district of Pennsylvania.
In admiralty.

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania.

The libel and complaint of the Philadelphia and Atlantic Steam Navigation Company against the barque Delaware, her tackle, apparel, and furniture, and against —— Lewis, master thereof; and also against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime; and thereupon the said libellants allege and articulately propound as follows, viz:

First. That the libellants, before and at the time of the collision hereinafter named, were and now are a corporation, duly incorporated by the State of Pennsylvania, and the owners of the steamship Osprey, a vessel propelled by steam, and employed in the conveyance of freight and passengers between Philadelphia and Charleston, South Carolina, and of the burthen of about eight hundred tons, under the command of Dickinson, master.

Second. That the said steamer Osprey, on the night of Saturday, the thirty-first day of August last, at a little after eight o'clock, under the command of said Dickinson, and being tight, staunch, and strong, and properly manned and equipped for the voyage, and having on board ninety-eight passengers and an assorted cargo of merchandise, was on her course from Philadelphia to Charleston aforesaid, in per-

formance of a stated trip, and was between the Brown Shoal and Cape Henlopen light-house, and steering about southeast, when she was run into by the said barque Delaware, as hereinafter mentioned.

Third. That the said Osprey had her usual signal lanterns hung out. The night was dark, but the said barque Delaware had no lights out, nor had she, it is believed, any watch on deck. The wind was from the southeast, and the barque running full before it. The latter was steering a little to the windward of the Osprey, but just before the collision she altered her course slightly, and ran directly into the steamer. The latter did not perceive her till she was close aboard, and, by stopping her engine and backing, did all in her power to prevent the collision. Her officers also frequently hailed the barque, which, however, took no measures to prevent the contact. The collision was caused entirely by the fault, mismanagement, mistake, bad seamanship, or wilful conduct of those on board the said barque, and not at all by any neglect or default of those on board the Osprey.

Fourth. That the said Osprey was under the command of a competent captain and pilot, and conformed in all things in her navigation to the laws and customs of the same; while the said barque did not conform thereto. The collision between the said two vessels occurred on the Delaware bay, and within the jurisdiction of this honorable court; and the said barque is now within the eastern district of Pennsylvania.

Fifth. That by said collision the Osprey suffered much damage, having one of her wheels and wheel-house torn off, and being otherwise broken and injured. She was compelled to return to the city of Philadelphia in consequence of the said injury received from the barque; and her trip was interrupted. The passage money was refunded to the passengers. The whole damage incurred in consequence of said collision is estimated at eighteen hundred dollars.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs, to be by them exhibited in this cause.

Wherefore they pray that process, in due form of law, according to the course of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said barque, her tackle, apparel, and furniture; and also that her said master, and all persons interested therein, may be cited to appear and answer the matters aforesaid; and that your honor may pronounce for the damage aforesaid, with costs; and make such further decree as to law and justice may appertain.

The Philadelphia and Atlantic Steam Navigation Company, by
JOHN L. LINTON, *Agent.*
G. M. WHARTON,
For libellants.

September 3, 1850.

John L. Linton, within mentioned, being duly sworn, says, that he

is specially deputed as agent to represent the Philadelphia and Atlantic Steam Navigation Company, in the matter of the within libel; that the facts therein set forth, so far as they are stated on his own knowledge, are just and true, and so far as they are stated on the information of others, he believes them to be true.

JOHN L. LINTON.

Sworn and subscribed before me, September 3, 1850.

CHAS. F. HEAZLITT, *U. S. com'r.*

In the district court of the United States, in and for the eastern district of Pennsylvania, in admiralty.

And now, September third, A. D. 1850, the said libel of complaint is in open court presented by George M. Warton and Thomas Balch, esquires, the proctors for the libellants; and thereupon, the court having considered of the same, it is ordered and decreed, that process of law do issue according to the prayer of the said libellant in said libel of complaint set forth and contained, on compliance on his part with the rules of court in that behalf established, and that the stipulation on the part of the impugnant, if such there shall be, be taken in the sum of twenty-five hundred dollars, to answer, abide by, fulfil, perform, and pay, &c., according to the practice of this court.

J. K. KANE,

Judge district court, U. S. E. D., of Penn.

And thereupon stipulation for costs is entered, in the words following, to wit:

UNITED STATES,

Eastern district of Pennsylvania, ss.

On this third day of September, A. D. 1850, and in the seventy-fifth year of the independence of the said United States, in open district court of the United States, personally appeared John L. Linton, and by stipulation, in due course of law, acknowledged himself to be indebted to the United States of America, for the use of all persons who may be interested in the premises, in the sum of one hundred dollars, to be levied of his goods and chattels, lands and tenements. On condition, that if the libellants in the above action shall pay all costs, which, by the decree, mandate, or practice of the court, they may become liable to pay, then this stipulation to be void and of no effect; otherwise to be and remain in full force and virtue, and execution to issue thereon forthwith for the amount of such costs, at the instance of any person interested as aforesaid.

JOHN L. LINTON.

Taken, acknowledged, and subscribed, this 3d day of September, 1850.

CHAS. F. HEAZLITT,

Clerk district court, p. t.

Whereupon process is issued, in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania, sct.

John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting.

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the barque or vessel called the Delaware, Lewis, master, together with all and singular her tackle, apparel, and furniture, as the same now are, and the same safely keep, to abide the final order and decree of this court, in a certain plea, civil and maritime, herein prosecuted against the said barque, &c., by the Philadelphia and Atlantic Steam Navigation Company, libellant, for collision, &c. And you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me, at a special session of this court to be holden at the room of the district court of the United States, in the city of Philadelphia, on the twentieth day of September inst., at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said barque, &c., should not be condemned, &c., for the payment of the damages by said collision, &c. And have you then and there this writ.

Given under the seal of the said court, at Philadelphia, this third day of September, A. D. 1850, and in the seventy-fifth year of the independence of the United States.

[SEAL.]

THOMAS L. KANE,
Clerk district court, U. S.

Whereupon the said respondents make and file their claim, in the words following, to wit:

And now, September 4, 1850, Nathaniel Waldron, intervening for the interest of Jonathan Palmer, Nathaniel Waldron, Benjamin B. Craycroft, lately trading as J. Palmer and company, and William B. Fisher, appears before the honorable court and makes claim to the said barque, her tackle, apparel, and furniture, as the same are attached by the marshal, under process of this court, at the instance of the Philadelphia and Atlantic Steam Navigation Company. And the said Nathaniel avers, that the parties above named, by E. C. Lewis, master, were in possession of said vessel at the time of the attachment thereof, and are the true and bona fide owners of the said barque, and that no other person is the owner thereof; and the said N. Waldron is agent for the said barque, and the true and lawful bailee thereof for the said owners. Wherefore he prays to be admitted to defend accordingly.

NATH'L WALDRON.

Sworn and subscribed in open court, this fourth day of September, A. D. 1850.

CHAS. F. HEAZLITT,
Clerk district court, pt.

Whereupon stipulation is entered into, in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania.

Be it remembered, that at a special district court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the fourth day of September, 1850, and in the seventy-fifth year of the independence of the said United States, before the honorable John K. Kane, judge of said court, comes Nathaniel Waldron, who, freely and voluntarily submitting himself to the jurisdiction of the said court, acknowledges himself to be indebted unto the Philadelphia and Atlantic Steam Navigation Company in the sum of twenty-five hundred dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements, of the said Nathaniel Waldron, to the use of the said the Philadelphia and Atlantic Steam Navigation Company; upon condition, that, whereas, a suit is now pending in said court for collision, wherein the said the Philadelphia and Atlantic Steam Navigation Company are the libellants, against the barque Delaware, Lewis, master, and Jonathan Palmer, and others, claimants. Now, if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void, otherwise in force, and execution may issue by virtue thereof at one and the same time against any or all the parties to this stipulation.

NATH'L WALDRON.

Taken, acknowledged, and subscribed in open court, the day and year above written. CHAS. F. HEAZLITT,
Clerk district court, pt.

The within named Nathaniel Waldron being duly sworn deposes and says, that he is permanently a householder within this district, and that he is worth the sum of twenty-five hundred dollars, after payment of his just debts and liabilities.

And thereupon it is ordered, that a writ of restitution issue to the marshal, directing him to restore the said barque to the said claimants upon payment to him of his costs and the necessary expenses by him incurred, which said writ is in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania, ss.

John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania. To the marshal of the same district, greeting.

You are hereby commanded to deliver and restore unto N. Waldron

the barque or vessel called the Delaware, with her tackle, apparel, and furniture, or so much thereof as was lately and is now in your custody and possession, by virtue of a writ of attachment lately issued out of said court, at the suit of the Philadelphia and Atlantic Steam Navigation Company, libellants for collision, and how you shall have executed this writ make return to me at a special session of said court to be holden at the city of Philadelphia, on the twentieth day of September instant, at 11 a. m., and have you then and there this writ.

Given under the seal of said court, at Philadelphia, this fourth day of September, A. D. 1850, and in the seventy-fifth year of the independence of the said United States.

THOMAS L. KANE,
Clerk dist. court, U. S.

Afterwards, to wit, on the tenth day of September, A. D. 1850, a certain other bond or stipulation is entered into by the said respondents, in lieu of that heretofore given, and is in the words following, to wit:

Be it remembered, that at a special district court of the United States, in and for the eastern district of Pennsylvania, on the tenth day of September, A. D. 1850, and in the seventy-fifth year of the independence of the said United States, before the honorable John K. Kane, judge of said court, comes Jonathan Palmer and Nathaniel Waldron, who, freely and voluntarily submitting themselves to the jurisdiction of the said court, acknowledge themselves to be jointly and severally indebted unto the Philadelphia and Atlantic Steam Navigation Company in the sum of twenty-five hundred dollars, lawful money of the United States, to be levied of the goods and chattels, lands, and tenements, of the said Jonathan and Nathaniel, to the use of the said the Philadelphia and Atlantic Steam Navigation Company, upon condition, that whereas a suit is now pending in said court for collision, wherein the said the Philadelphia and Atlantic Steam Navigation Company is the libellant, against the barque Delaware, Lewis, master, and Jonathan Palmer & Co., claimants; now, if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void, otherwise in force, and execution may issue by virtue thereof, at one and the same time, against any or all parties to this stipulation.

J. PALMER,
NATH'L WALDRON.

Taken, acknowledged, and subscribed in open court, the day and year above written.

CHAS. F. HEAZLITT,
Clerk dist. ct., p. t.

And F. A. Raybold, esquire, another of the proctors of the said court, also comes into the said court, and exhibits the answer of Jonathan Palmer and others to the said libel, which, being read and filed, is in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States of America, in and for the eastern district of Pennsylvania.

The answer of Jonathan Palmer, Nathaniel Waldron, Benjamin B. Craycroft, and William B. Fisher, owners of the barque Delaware, to the libel and complaint of the Philadelphia and Atlantic Steam Navigation Company, answers and alleges as follows:

First. The respondents of their own knowledge do not know, but on information and belief admit, the truth of the matters in the first article of the said libel alleged.

Second. The respondents have no personal knowledge of the several matters and things contained in the second and third articles of the said libel, but upon information and belief they deny the same, and say that the truth is as hereinafter alleged.

Third. That on the evening of the thirty-first day of August last, between eight and nine o'clock, the said barque Delaware, of which Edward Lewis was master, being in all respects a tight, staunch, strong, and propely manned vessel, and equipped for the voyage, having on board a cargo of merchandise and several passengers, was on her course from the port of Boston to the port of Philadelphia, and having passed into the Delaware bay, when about seven miles above the Cape Henlopen light-house, and about the same distance below the Brandywine shoal light, steering in a direction about north-northwest, was ran into by the steamship Osprey, in the said libel referred to. That the night was overcast with clouds, and the said barque Delaware had the usual watch on deck. The tide was ebbing, and consequently against the said barque, but the wind was about southeast, and while heading N. N. W., as aforesaid, a light was seen by the master of the said barque Delaware, who was on deck, on the look-out, which light proved to be that of a steam vessel, but which way she headed, or what was her course, he could not discover. He immediately ordered the light of the said barque, which was well trimmed, to be raised so as to be distinctly seen. The approach of the steamer, which proved to be the Osprey, J. Dickinson, master, was so rapid, being under full head of steam, and with the tide coming at the rate of about eleven or twelve miles an hour, that the said master of the barque could not ascertain the exact course of the steamer, (although he endeavored so to do,) but was under the full belief that she would pass to the larboard of the barque until a very short time before the collision, when perceiving, by a change in the position of the bow of the steamer, that she would cross the starboard bow of the barque, he gave orders to heave the helm of the barque hard to starboard, to avoid a collision, and immediately he heard an order given on board the steamer to put the helm "hard a-port," at the same time the steamer's engine bell rang,

and the order was repeated, hard a-port. In a very short time the steamer struck the barque's anchor at the starboard cat-head, and passing along the starboard wheel, struck the knight-head of the barque, and rolling over her to the fore-top-mast back stays, tore away and destroyed the knight-head, main rail, windlass and deck of the barque, and also her fore-rigging, fore-sail, lower studding sail, end of the fore-yard, and top-mast studding sail boom, leaving some iron parts of the wheel of the steamer on board of the barque. That the lights of the steamer were seen off the larboard bow of the barque, from which, by luffing, the captain was sure the steamer would pass to the larboard; that there was no apparent change in the steamer's course, until a very short time before the collision; and as soon as such a change was perceived, the helm of the barque was put hard to starboard to avoid a collision. The steamer's speed must have been very great, judging from the manner in which the wheel rolled over the barque, destroying every thing within its reach, and doing great injury to the barque. That the collision was caused entirely by the fault, mistake, bad seamanship, or wilful conduct of those on board the steamer, and not by any fault or neglect of those on board of the barque. That the said barque was then under the command of a competent captain, and conformed in all things to the laws and customs of navigation.

Third. That the respondents have no personal knowledge of the matters and things contained in the fourth and fifth articles of the said libel, but from information and belief they allege the contrary thereof to be true, and say that the captain, pilot, and crew of the said steamer were not competent and sufficient, but otherwise, and did not manage and navigate said steamer in conformity with the laws and usages of navigation. That the said collision was within the jurisdiction of this honorable court.

Fourth. That all and singular the premises are true.

Wherefore, the respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

F. A. RAYBOLD,
Proctor for respondents.
NATHANIEL WALDRON,
For self and owners.

Nathaniel Waldron being duly sworn saith, that the contents of the foregoing answer, so far as stated of his own knowledge, are true; and those things stated upon the knowledge and information of others, he believes to be true.

Sworn and subscribed January 31, 1851, before
CHARLES F. HEAZLITT,
U. S. Commissioner.

To the honorable John K. Kane, judge of the United States district court for the eastern district of Pennsylvania:

The replication of the Philadelphia and Atlantic Steam Navigation

Company, by John L. Linton, their agent, specially authorized, to the answer of Jonathan Palmer, Nathaniel Waldron, and others, intervening, &c., alleges, to the best of his knowledge and belief:

First. That the said libel is true, certain, and sufficient, and will be so proven and maintained; and that the answer aforesaid is untrue, uncertain, and insufficient.

Second. That he denies the several matters and things contained in the second, third, fourth, and fifth articles of said answer, and alleges the truth of and concerning the same, to be as follows, to wit: That the said barque did not display a light, or if she did, that the same was not displayed properly and in seasonable time; that she had no pilot on board, as she ought to have had; that she did not port her helm, as bound to do, but put the same hard a-starboard, at the approach of the steamer, thereby causing said collision; that the captain and other officers of the barque descried the steamer when the latter was more than five miles off, and then managed said barque with so much incompetence and neglect, and in such an unseamanlike manner, as to cause, and not to prevent, the collision aforesaid; that the officers of said barque had full time and opportunity, betwixt the time when they first made out the steamer, and that when they put the helm to the starboard, to have so managed said barque according to maritime laws and customs, as to have wholly avoided said collision, as they should have done; that there was no such change in the course of the steamer as to cause her to cross the starboard bow of the barque, but that said steamer was proceeding on her course, without change, until such time as the pilot saw the barque, when the circumstances occurred which are stated in the libel; that backing the steamer, and putting her helm a-starboard, was the same as putting her helm a-port, when going forward, and would have caused the steamer to have passed on the larboard side of the barque; and so she would have done, had not said barque put her helm hard a-starboard instead of hard a-port, as she ought to have done; that the said barque was in all respects managed with careless and wilful neglect, and in an unseamanlike manner, and contrary to maritime law and usage, and so of her own default and fault caused said collision; but said steamer was managed in all respects in a proper and seamanlike manner, conforming therein to maritime law and usage, and did all things possible to avoid and prevent said collision.

Third. That all and singular the premises are true; and that said libellants pray as, in their said libel, they have heretofore prayed.

GEORGE M. WHARTON,
THOMAS BALCH,
Proctors for libellants.

Sworn and subscribed February 6, 1851, by
JOHN L. LINTON,
CHARLES F. HEAZLITT,
U. S. Comm'r.

In the district of the United States, in and for the eastern district of Pennsylvania, in admiralty.

THE PHILADELPHIA AND ATLANTIC STEAM NAVIGATION COMPANY vs. BARQUE DELAWARE. } Collision.

Depositions of witnesses for libellants, taken under annexed rule, before Charles F. Heazlitt, U. S. commissioner, Sep. 12th, 1850.

Mr. G. M. Wharton and Mr. Thomas Balch, for the libellants.

Mr. F. A. Raybold and Mr. Campbell, for respondents.

Written interrogatories waived by consent.

John Dickinson, being duly sworn, deposes and says: I command the steamer Osprey; I have followed the sea since I was 12 years old; I am now 29 years of age; I have commanded the Osprey 18 months; she is owned by the Philadelphia and Atlantic Steam Navigation Company, and trades between the ports of Philadelphia and Charleston, and carries freight and passengers. The tonnage of the ship is 607 $\frac{7}{95}$ tons, register tonnage. She will carry about 700 tons. She left here for Charleston on Saturday, 31st August, at 10 o'clock, a. m., for Charleston, S. C., under my command; I don't exactly know how many passengers we had, but I think we had about 90 odd, cabin and steerage; cabin passage is $20, steerage passengers pay $10; she had some $1,180 freight—that is, her freight list come to that; her cargo was an assorted cargo, such as is purchased in Market street for a southern market. We have, and had, on board 29 in all, including engineer, fireman, deck hands, &c., the whole ship's company—that is, a proper company for the ship; the steamer was well found in every respect, and as good as she would be for the voyage; her condition was as good as any ship as could go out of this port; she stands A 1, I believe. We were about half-way between Brown shoal and Cape Henlopen light, before any thing occurred; the late survey makes the cape 103 miles from the city, and this shoal is about 9 miles this side of Cape Henlopen light; we were, I suppose, about one-third or one-half way down below the shoal; we had a pilot (John W. Wilson) on board; it was quarter past 8, p. m., when the collision occurred; it was very dark then, or about the time; a heavy cloud to the southward and eastward; the wind was about S. S. E.; the tide was ebb, the last of the ebb. We were steering S. by E.; I heard the pilot give the man directions, before we saw the barque, to steer S. by E.; the lights were then open, (Cape Henlopen lights,) the small light open to the westward of the large light on the cape; I was standing on the deck, just abaft the wheel-house, talking to some of my passengers, and I heard the pilot say, "keep a look-out, there is a vessel shutting the lights in," meaning by that Cape Henlopen lights; then I heard him sing out to starboard the wheel! starboard quick! I jumped into the wheel-house to assist to heave the wheel starboard; as soon as I had done that, I run to the engine-room, where I could sing out to the engineer, and

the pilot sung out "stop her!" I gave the engineer the orders, and she was stopped immediately; right away, he sung out, "go back!" and I gave the engineer the order, and the ship was put back, and, as I turned round, I saw the barque's lower steering sail coming in right abaft our starboard fore-rigging; as soon as I saw her coming in, I gave an order to my passengers to look-out for themselves, as the barque was going to strike; she fetched up in our wheel-house, or on the wheel, the starboard wheel; she slipped from the wheel aft, on to the starboard for'ard quarter boat, and cut her in two, or half in two; she cut clear down to the keel; the barque was then laying with her sails all full, forcing her head against us, her yards as square as possible; I sung out repeatedly for him to haul in his starboard braces and back his yards, and haul the barque clear of us; he done so after a while, some 15 or 20 minutes, I suppose it was, and backed her clear; that was the end of the actual contact; we did not come together any more.

I should think we were together twenty minutes, perhaps longer; I did not note the time, but I should think we were about that; the Osprey had three lanterns out, one under the fore-stay, on the fore-stay up as high as the fore-yard, one on each guard, hanging to the brace that goes across; so that the three lights form a triangle; the forward light was midships; these lanterns were burning; there is one, a very large lamp, we carry on our fore-stay; a very brilliant lamp; the other two were smaller lamps, just trimmed, and all in good order. I did not see any lights on board the barque Delaware. We hailed the vessel that came in collision with us, and some one on board told us it was the barque Delaware; this was after the collision; I hailed them, and asked them if they were going to proceed up; they told me yes! I asked them to report the Osprey, and state that she was damaged, and had to return to the city. I then rung my bells to go back; I did not then know the damage to the wheel; she turned some little, and stopped; that was back; then I rang to go ahead; all this was after we separated; she turned some little, and stopped again; then I got a "globe-lamp," and went into the wheel to see the damage, and found that the arms of the wheel, three of the arms, were bent outside of the guard, which stopped her from turning; then there were two or three more, which were smashed up inside of the guard, which did not interfere with her turning. I then went into the wheel with my engineers, firemen, &c., and cut the bolts out of the arms of the wheel so as to clear the wreck. We wanted to take the arms off, and take them on deck. After we got them clear, we came up to the city with the other wheel and the broken wheel; we had made sail also; as soon as we got clear of the barque we made sail, and the sail was on her while we were clearing the wheel; and afterwards we kept it on all the way, until we came up to Philadelphia, which we did as soon as we could, and arrived about half-past 10, Sunday morning, and landed our passengers.

I heard the pilot sing out to the barque to "port your wheel;" that is the last I heard, until I saw the steering-sail coming in. It was not

a great while before the collision that the order was given; it was a very short time, because the barque was coming with a fair wind, and the steering-sails set. I heard no reply to that hail, nor can I tell whether the barque altered her course; I did not see her until her steering-sail was coming over us, as I stated before.

Question. What course was the barque steering at the time the pilot hailed her as you have just mentioned?

Answer. She must have been steering N. N. E., if Mr. Wilson was right that she shut out the lights. I do not know of my own knowledge; but if Mr. Wilson saw her shut the lights, she must have been steering N. N. E.; but when she come in, and struck us, she must have been heading N. N. W., or N. W. by N., because we were going either S. S. E. or S. E. by S.; when the barque came into us, our course was changed a little to the eastward.

Question. Then, captain, the barque must have changed her course between the time when your pilot first hailed her, and the time of the collision? (Objected to by Mr. Campbell.)

Answer. Yes, sir; I should think so.

Question. Was, or not, the course of the barque, before she so changed, to the windward of you?

Answer. No, sir, to the leeward; she was steering to the windward of us. The way I understand it, the barque was steering a course up the bay to leeward, and if he had kept his course he would have gone to leeward of us; but instead of that, he steered to the N. and E., so as to bring her in our wake; then he put his wheel starboard, and come alongside; that is the version I have of it. When I say "wake," understand me to mean that a "wake" is in the line of the ship, either astern or ahead, so that it is in the line with the ship; when I spoke of the wake, I meant a line in the head of the ship.

Question. When the pilot sung out to the barque to "port her wheel," did the barque do so or not?

[Objected to by Mr. Raybold, because the witness has said he knows nothing about it.]

Answer. No, sir; she did not; she couldn't have done it, or she wouldn't have come alongside.

I did not see any men on board the barque at or immmediately before the collision; after the barque got clear, I heard them call for a light; I did not see any during any part or time of the collision.

Question. What, in your judgment, was the cause of the collision? (Objected to by Mr. Campbell.)

Answer. By the barque shifting her wheel after the pilot sung out; if he had kept his wheel a-port, he would have gone clear of us.

I have known the pilot I have spoken of four or five years; he is a good pilot; as good as the Delaware bay affords.

We had at the time of collision two men and a boy on the forecastle, looking-out, besides the pilot; the man in the wheel-house could see ahead, and the man at the wheel; that was our look-out; the mate was on deck, he was not on the bow; I was also on the deck, besides

some twenty or thirty passengers. In going down the bay we were keeping the usual course for vessels going to sea. I suppose in such a night the lights of the Osprey could be seen 6 or 8 miles; the forward light probably six miles. I saw a great deal of the passenger money refunded, but I don't know how much; I saw some checks given to some of my passengers, who afterwards went by the land route; that was in Philadelphia, after the return of the vessel; I can't say exactly how many had the money refunded, but I should think some forty or fifty. We were from Sunday, at 10 o'clock, until Tuesday, at 12, engaged in repairs; men working night and day on the ship; they were at work on the wheel and wheel-house. She started on Tuesday, at 12 o'clock; she was repaired sufficiently for the voyage, but not entirely; only to go and return, and have the repairs completed here; machinists and carpenters are now at work on her.

Cross examined by Mr. Campbell.

The Osprey is 180 feet long; her beam is 27 feet; the diameter of her wheels is 24 feet; I think the width of her buckets, or floats, is 5 feet; the arms of the wheel are iron, the rims also; the wheel is all iron, except the buckets, and some of them are iron. The barque struck in the wooden buckets; I can't tell how many iron buckets the steamer had on that wheel; the object of the iron buckets is to help the engine over the centres, (I mean their weight where the steam does no good, at the dead point.) These iron buckets are about 2 inches to 2½ inches thick, and our wooden floats are about the same. We had, I think, ninety, or upwards, passengers when we went down on Saturday; I am not able to tell how many I took down on Tuesday; I should suppose some 45 or 50 went out on Tuesday; there is a list which will show, as also a check book, the amount repaid passengers. We set our lights on Saturday evening before dark; I can't tell exactly what time it was, but it was before dark. We were about the Brandywine when we set them; we left here at 10 precisely, on Saturday. The tide, when we started, was just making down. We generally carry from 15 to 20 inches of steam, and in smooth water the average speed is from 9 to 10 knots, say 10 knots, not a little faster.

Question. Well, captain, if it is not a little faster than 10, how did you get so near the capes in that time?

Answer. The average is 10; we go sometimes slower and sometimes faster; having an ebb tide down we go faster; I consider 10 knots our fastest rate; I don't suppose she ever went over 11 knots, to force her up to the notch. I don't recollect at what hour of the day it became dark; it was a dark night, at a quarter past 8; you couldn't see a great ways at that time; you might have seen a light a good distance, but not a sail; I would not, as a seaman, call it a very dark night; it was dark, but I have seen darker nights at sea than that; we were in the main channel, the channel that is used by ships going in and out, the nearest shore was the point of the Cape (Henlopen.) The pilot, I

have spoken of, is now attached to our ship; he is a branch pilot, and served his time in the pilotage; he has been attached to our ship since she belonged to Philadelphia, say last March a year ago, except one trip out, in the ship Philadelphia; when the Osprey was laid up repairing; I believe he did also pilot one or two sailing vessels while the Osprey was laid up, repairing, last winter. I didn't see the barque Delaware, or any thing of her, until I saw her steering sail coming over our bow; she struck on our starboard bow, just abaft the anchor, starboard anchor, on our bulwarks, her bow against our bow; she knocked a hole in our bulwarks abaft the anchor; carried away the foreyard, laying on the rail, and the next place she struck was the wheel and wheel-house.

Question. Have you given, in your examination in chief, a complete and seaman-like account of what took place at the time of collision?

Answer. Yes, sir; I consider so.

Her bowsprit struck our wheel-house; I am not certain whether it was her bowsprit or jibboom; her bowsprit did not come over our fore deck, it came in abaft our fore rigging; carried away the starboard king post, or brace. The jibboom, or bowsprit, struck the top of the wheel-house; that is, I think it was; I mean the front top of the wheel-house; it tore the top off; the circle in the side, on the outside part, was carried away; there is a piece on the guard started, the water closets torn away; they were forward of the wheel; no other part of the wheel-house torn away; the arms of the wheel must have been bent by the barque's bow, the barque's starboard bow went underneath the guard into the arms of the wheel.

Question. Did you state this in your examination in chief?

Answer. I think not, sir. I didn't notice that our vessel rolled considerably to the larboard at the time of collision; there was not much sea on at the time; no moon. Our wheel did not mount over the bow of the barque; it was going the other way back; it could not have mounted over, in consequence of the barque striking our starboard bow, she came almost even alongside of us; when she went into the wheel, she slid round abaft the wheel-house, as stated before. While the barque was laying alongside with her sails full, she canted her quarter off; that is, while she was in the wheel, before she slipped off; and when she struck the quarter boat, she was angling, so much so, that her jibboom reached our mizzen mast. I believe I did not state that in my examination in chief. The arms of the wheel were twisted into all kinds of shapes; there were three arms bent, twisted around outside of the guards; the others, I don't know how many, were bent up considerably; I can't tell you how many floats we lost; the arms were bent up outside the guard; some of them were bent double, so much so that the wheel could not make a revolution. The Osprey was in charge of the pilot at the time of the collision; our helm was a-starboard; we were going back, which makes our head a-port. The chief engineer reversed the engine; I don't know how long before the col-

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lision; a very short time. The order "stop her," "back her," followed quick upon one another; I don't remember the names of the men on the watch, on the look-out; they are still on board the Osprey; I do not recollect who they were. The first thing that attracted my attention was that the pilot said to the look-out forward, "keep a good look-out—there is a vessel shutting out the lights;" that was about four minutes before the collision; the pilot was forward when he halloed to those on the barque to "port your wheel;" I mean by forward, that he was by the foremast. The barque's bow struck forward the fore-rigging, between the anchor and that; the anchor was well forward; I did not let go my anchor after I got clear; I passed the barque on the way up the river; I bore right round, made sail, and came right up the bay; I ran both my wheels coming up.

Re-examined.

The Osprey commenced backing right away; it took likely two minutes, perhaps not so long; as soon as he stopped her, he commenced backing; the operation of stopping the engine and backing the engine takes but a very short time; our vessel was full laden.

Re-cross examined.

Question. How long does it take to stop the Osprey when under full headway, and back her, to stop the ship's way?

Answer. It would take, perhaps, some two minutes, or longer, to kill her way; altogether, I think, her engine is from 300 to 350 horse power; if it was a low head it would not stop so quick, but with a good head of steam you could back at once.

JOHN DICKINSON.

Taken, sworn, and subscribed, September 12th, 1850.

CHARLES F. HEAZLITT,
U. S. Commissioner.

John J. Garvin, being duly sworn, says: I reside 153 Catharine street. I was aboard of the Osprey at the time of the collision as passenger. I was sitting on the forward deck, rather forward of the wheel house, on the starboard side. I am a sea captain, and have sailed forty odd years out of this port. I am familiar with the channel of the Delaware bay; I am better acquainted with the river than with the bay; the bay is very intricate, as much so as any bay on the coast; perhaps more so. I was sitting there very comfortably talking, thinking we had a fine run down, and so on, when all at once the pilot from forward sung out "hard a-starboard;" the captain was sitting near me, and jumped into the wheel-house and helped the man at the wheel to put the helm hard a-starboard; the captain sprung into the wheel-house, and then came out of the house, and the pilot cried out, stop her; and I expect he went to the bell rope to stop her. I expect he done this, as every thing

was done so sudden, that I don't know whether the captain rung the bell or not; but the boat was stopped instantaneously. The next order was given to back her, and I afterwards, in conversation, heard that they could not back her, only a turn or two, in consequence of the iron arm projecting outside and striking the wheel-house in several places. [Mr. Raybold and Mr. Balch object to the hearsay testimony; Mr. Raybold withdraws his objection.] How many turns back she took I don't know, for by this time the vessel was foul of us; as near as I could judge this occurred about one-quarter past eight, p. m., the watch had been relieved and the bell struck. I don't know what course the steamer was heading at this time; as I was a passenger I did not take any interest; the two lights at Cape Henlopen were in sight, and we usually make for them. The Osprey had three signal lights, one at her fore-stay and one on each side of her wheel-house; they were three very good lights, too. We were heading for the two lights; such is the usual course. I was sitting on the starboard side, and when the pilot sung out, we all pretty much rose up at the same time. I did not know whether we were not going to run over the buoy of the Brown, and I thought to look over the side, till the vessel's jib-boom, sail and all, came up so near us that the captain called out to clear ourselves; I did not know which way to run hardly, but I went on the opposite side. I did not then have a good view of the barque; I was trying to get out of the way of her falling spars. It was very dark forward, as it almost always is about the cape; it was much darker for us than it was for the barque; it was lighter for the barque; it was lighter to the northward than it was to the southward. There was not a light to be seen on board the barque; the first light that I saw was when I went aft; that was some two or three minutes; then I saw a man with a lantern looking at the damages; this was after the collision. The barque's sails were all full, the yards nearly square, and forging her way into the boats on the Osprey; this boat was abaft the wheel-house. The captain, who by this time had got on the wheel-house, said that if they wanted to get clear of us "they must back their sails, not lay there chawing our boats to pieces;" they braced the yards in as near as they could, the wind was so much up, and almost as soon as they done that it moved the barque, and she dropped astern. We could do nothing; we just had to lay like a hulk in the water. I don't know what course the barque was heading at the time of the collision. The wind was well to the southward, or southward and eastward; I did not pay much attention, but I know it was pretty near ahead of us. I have known Capt. Dickinson ever since he has commanded the Osprey, and, as far as I have seen, he is a correct man, and understands his business well; both the navigation of the vessel and every thing else; a smart, capable man. I have known the pilot, Wilson, for many years; he is a first rate pilot, sober and industrious. [Objected to by Mr. Raybold.]

The collision took place on the bay; it could not have been above eight or ten miles above the Cape Henlopen light. I don't know whether we had passed the buoy of the Brown, or not. I think we had. I was not looking out.

Cross examined by Mr. Raybold.

In coming in, vessels generally steer N. N. W., or northwest by north; it depends on which side of the channel they are on. Ship masters generally pay little attention to the courses; they give command of a ship to a pilot, and he is considered as captain until the vessel gets to sea, unless we see him incompetent, and is running the vessel into danger. We left the city on the 31st of August, within a minute or two of ten o'clock, a. m. I suppose she did not go much less than nine knots all the way down; she must at least made that; she had the tide with her. When the pilot gave the directions, "hard a-starboard," I did not hear him give any others until he said, back her. Oh, yes—excuse me—after he cried out "hard a-starboard," he said, stop her; the next order was "back her;" those were the only three directions that I heard the pilot give. He did not give any more, to my knowledge. Then the captain gave the orders after that. The first intimation that any thing was wrong, was the pilot crying out "hard a-starboard," then "stop her," then "back her." The time between the first order, "hard a-starboard," and "stop her," was not long; I can't exactly tell how long, for every thing was in confusion. It might have been a minute, or a minute and a half, or two minutes, or perhaps longer, but I cannot say; being a passenger only, I was looking out for myself.

The captain sung out "clear yourselves," and then I looked aloft and saw the vessel's sails over head; that was the first time I saw the barque. I think I was about half way between the wheel-house and the fore-top-mast back stays, when I first saw the barque. I was sitting on the starboard side, as above described, (I mean by wheel-house not the pilot house,) with my feet on the side rail. When I jumped up I did not look over the starboard bow, or see any thing of the barque. The orders, all three of them, had been given before I saw the vessel. I was standing there when I saw the barque. I believe I was the last one there that attempted to go, after the captain cried "clear yourselves." The first place the barque struck was the fore-yard; that broke off; then she struck the guard of the wheel-house. It was the starboard bow, some where in the neighborhood of the barque's cat-head, that came in contact with the wheel-house.

The bow of the barque must have gone under the guard; because a vessel coming along in that way would force itself under the steamer, and lift the steamer over. I don't see how otherwise she could get under. The steamer was pretty well stopped at that time. I could not undertake to tell how long it would take for a vessel, going at the rate of nine knots an hour, at least, with fifteen to twenty inches of steam, to stop her headway, but it would not take long. I would not name any time, because I don't know. I don't know that the wheel of the steamer went over the deck of the barque. If I saw the damage to the barque, I could tell how far she went in.

Re-examined.

The pilot was in his proper place, forward of the foremast. I think, if they had as good a look-out on board the barque as there was on the steamer, we should have run clear of each other.

Question. Then, in your judgment or opinion, to what was the collision owing? [Question objected to as not evidence.]

To the vessel not keeping a proper look-out; to the vessel not seeing us. She had her foresail on her; her lower steering-sail she left on the deck of the steamer. The man at the wheel of the barque must steer by looking forward, and he generally keeps the best look-out; and if the foresail had not been down, and the steering-sail there, he must certainly have seen our lights.

Re-cross examined.

I don't know that there was not a man at the bow of the barque, but I doubt it, as none was seen. I did not look for a man there. I never heard a word from the barque at all. I did not hear any other orders given on board of the steamer, but those I have mentioned. I did not hear the pilot of the steamer cry out, port your helm. It was more than ten minutes after the boats came in collision that the sails were backed, and the barque went clear; it took them some time to back their sails. I have no stock in this company—not a cent. I have gone on a voyage in the Osprey before; once to Charleston and back. After the barque got clear she made sail and came up; she came up before us. We passed her the next day, below the Lazaretto. The steamer got under weigh some six or seven hours after the collision; she laid still, she could not get under weigh until all the iron was cut away. I don't know whether our sails were hoisted or not. I turned in in less than an hour after the collision, and when I got out of my berth again the steamer was under weigh; and I only know from hearsay what time she got under weigh.

Question. Is not the opinion you expressed formed entirely from what you saw on board the steamer, and not from what you saw on board the barque, which you say you did not see until the moment of contact?

Answer. Of course; as I know nothing about the barque.

I do not follow any business now. It is some three or four years since I followed the sea.

JOHN J. GARVIN.

Taken, sworn and subscribed, September 12, 1850.

CHAS. F. HEAZLITT, *U. S. Commissioner.*

September 13, 1850, 4 *p. m.*

John W. Wilson, being duly sworn, says, I am 31 years of age, and reside in Southwark, county of Philadelphia. I am a pilot, a branch pilot, and have been so ten years. I have followed the sea, altogether seventeen years. I am attached to the steamer Osprey, as a pilot, and

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have been her pilot a year last March. I was her pilot on the trip, commencing 31st August last, bound from Philadelphia to Charleston, South Carolina. I think we passed the Brown shoal about half-past 7 or a quarter before 8, steering south by east; the wind was southeast, a good strong breeze; the tide was last of the ebb—the latter part of the ebb; the night was rather dark. We were in sight of Cape Henlopen lights, and of Breakwater and Cape May lights, all three. I should suppose that the Brandywine light boat was about nine miles to the northward of our position. Our course at the Brown was south by east. I went south-southeast, where I got about two miles below the Brown It was about a quarter or twenty minutes past 8 o'clock when I saw the vessel shut the light-house in—I mean Cape Henlopen lights. When the barque hid the light-houses in, I immediately told the man on the look-out. Says I, "keep a good look-out forward." They answered me, "Aye, aye, sir." Says I, "there is a vessel shutting the lights." I told the man at the wheel to heave his wheel "hard a-starboard." Capt. Dickson jumped in and helped the man to keep his wheel over. I told the captain to stop the ship; he passed the word into the engineer, and the ship was stopped. I seen the barque coming so fast on us, I told Capt. Dickson to have the ship backed. He told the engineer to back the ship. We hadn't backed long, I suppose a minute or two minutes, before the ship was into us. I judge the Osprey was heading, at the time the barque struck us, southeast-by-east. The ship was into us at this time. When the ship struck, I should suppose her head was about north. I can't tell exactly. Her yards were square, her lower and topmast steering sail set—that was all the light sails that I know was actually set. I should think the barque was steering about north-northwest, when she first shut in the lights. I can't tell, but I should judge it to be that; that is the course he ought to have been steering, bound up the Delaware; that was the natural and usual course for the buoy of the Brown. I should suppose he headed about north at the time he struck us—the light showing on the starboard side of the barque would indicate that as the course he was taking. The steamer had her usual lanterns out; we had a lantern under the foreyard, one on each king post—each forward king post; these three lights would form a triangle, provided we were head on. I did not see any lights aboard the barque. I hailed her myself. I hailed her before she got into us, I suppose a minute, and told him to put his wheel hard a-port. Had they done so aboard the barque, she would have gone ahead of us—he would have gone to the eastward of us—have come across the bow of the ship. No answer was given to that hail. The first word I heard spoken on board of the barque, was the answer I got, when I asked what barque it was. I suppose that was some ten minutes after she struck us. When I called out to her, to put her helm a-port, the barque's head shot off to the westward, showing that her helm must have been put to the starboard; if he did put his helm to starboard, he must have had it to starboard all the time—from the time I hailed him to put a-port. The effect of keeping his helm to starboard was to

make her head fall off, so as to strike us about midships. The steamer backed before the actual contact. She was backing, I suppose, a minute or two minutes. Our helm, when we were backing, was to starboard—that made our head fall off to the westward. The ship would have to have strong way on her, for that to do any good; her head would be falling off with the barque; going astern in that way would make her head fall off, and bring the heads of the two vessels together; that was the occasion of my directing him to port his helm. If he had ported his helm, he would have gone clear of us. My candid opinion is, that if he had ported his helm she would have gone clear of us, and we would have had free way to have gone ahead again, after our backing. I found we could not clear him in any other way except to back, and we couldn't do it there. Our backing was a movement to get clear of him. We couldn't back after she struck us. I don't think we were making any headway through the water at all. At the time of collision, we were not going ahead.

Question. If you had been going ahead with your ship, laden as she was, and meeting the barque as you have described her, what would have been the effect on the latter?

Answer. Striking where we did, I think we must have sunk her.

Question. As you were backing at the time, would not the effect have been, when you met the barque ——— rather to raise her somewhat out of the water than to sink her?

Answer. It would have a tendency to shove the barque from us. The barque's steering-sail boom first struck the bow of the steamer, near the anchor. Her head was about north, at the time she struck us. Her steering-sail boom is a spar, rigged out some fifteen or twenty feet outside the yard arms, the sail set from that down to the barque's rail. I don't know whether she had a triangle lower steering sail, or a lower boom—one or the other she had. I suppose that it was a lower boom that knocked a hole through our bulwarks, forward. The bow of the barque struck us on the bluff of the starboard bow, about six feet from the barque's stem; struck us under our starboard guard, carrying away about one-third of our wheel. Her bowsprit or jibboom knocked a part of our wheel-house off—bowsprit I think it must have been; it was the top of the wheel-house; better than one-half of the wheel is below the guard—a good bit; the wheel is hung below the guard; the bluff of the bow of the barque struck the outer rim of the starboard wheel, that mashed some of the buckets in against the ship's hull, and some of the arms and rim of the wheel; a portion of it was outside of the guard, bent all up, so that we couldn't turn the wheel; it was from nine o'clock to three in the morning before we got the wheel so that we could turn it; I don't know in what way, properly, to explain how the arms of the wheel were bent out as they were by the collision; it must have been done by some of the timbers striking as she came in, so that we couldn't turn the wheel either way. The sails of the barque being full, she was kept into us so much the longer; I hailed them several times to lay their yard aback, but I got no answer

from them; I hailed them to take their head-sail in, their jib, but they didn't do that. The result of their not backing their sail caused them to do more damage, for when they got clear of the wheel-house they came into the quarter boat and almost cut it in two; if they had backed their sails, I think they would have gone clear of us in a minute, or less time; their sails being full, kept them forging right against the ship all the time, and by the time she did get clear of us, our head had fell off some four points by the compass.

Question. If a light on the barque had been raised in front of the foresail of the barque, would you not have necessarily seen it?

Answer. Before she got into us, I could have seen any light that was forward of the foresail.

Question. If any light on the barque had been put under the bowsprit, or upon it, or upon the jibboom, or upon the foreyard, would you not necessarily have seen it?

Answer. Yes, sir; certain.

Question. If the light on the barque had been put in any part of the rigging, except that above the sails, would not the sails have covered the light?

Answer. A light could not have been seen by us, only forward.

Question. Where is the usual place for sailing vessels, such as the Delaware, to carry their light?

Answer. The usual place is forward, under the bowsprit cap, or jibboom end; sometimes I have seen them at the foreyard arm.

Question. If a vessel is coming with a wind free, but head tide, is she more or less manageable with the helm?

Answer. More manageable—is with me, any how. The Delaware had a head tide, and the wind free. I know the Delaware had a head tide, for I drifted out nearly an hour.

Question. You have said that the lights of the Osprey were so arranged as to form a triangle; this being so, could not any one tell the direction she was steering?

Answer. Yes, sir; I should think they might, very easy.

Question. Would not the altering of the course of a ship, so as to bring her a-beam, bring her lights into a line? And would or would not any alteration of either ship so alter the position of the lights that a good seaman would at once know the position of the steamer?

Answer. Yes, sir; altering the ship's head would bring the two side lights in range, and any man might know we were going from them; it would look like a fore-and-aft light.

There was a light hailed for from the barque, to see what damage was done. I do not know whether the light was hailed for to bring the light from on board the barque.

Question. If she had a light in a proper place, or in any part of the rigging, or on deck, would there have been any occasion to hail for a light, to see the damage that was done?

Answer. I think if his light had been in a proper place, it would have been broken. If the light had been in its proper place, it would have been as handy to have got that, as to have hailed for one.

Cross examined.

We left Philadelphia about ten o'clock; we reached the buoy of the Brown about half-past seven or quarter before eight; not much sea on; the wind had been blowing all day southeast—a good strong breeze; no rain, that did not make a great deal of sea; we generally light our lamps at dusk; I suppose we lit our lamps that night at half-past seven; no one of the lanterns were colored—all plain glass. We went from nine to nine-and-a-half miles an hour, going down; there are two lights on Cape Henlopen—Cape light and Beacon light; the Beacon light is farthest northward, about a mile; we seen those lights, I should think about half-past seven; it was a cloudy night—a night that a light would show a good ways—a night when I want to see a light; it was a right down dark night, cloudy; I suppose I saw the barque some two or three minutes before her steering sails crossed our bow. I was standing on the starboard fore rigging, holding on to the fore swifter, when I first saw the barque; she shut out the big light first; we were then steering south-southeast; when she first hid the lights, I did not think the vessel was within five hundred yards of us; I didn't think she could possibly get any nearer to us; the lights bore from us south-southwest; we were in the main ship channel, outward, rather to the eastward; the lights bear north and south when they are in range.

I did not know what sort of a vessel it was, when I first saw her; when she first went by the lights, I think she was at least five hundred yards from us, at least I thought so at the time; she might have been closer; the first thing that came on our deck, was her steering-sail and her steering-sail boom; we were heavy laden, full; we drew full ten feet and six inches; there is a heavy guard goes outside our wheel; the height of that guard, I should think, was about eight feet, when we drew ten feet six inches; it may be a little less, I can't tell exactly; the shaft of the wheel, I should think, was twelve inches below the guard; the diameter of the wheel is, I believe, twenty-six feet; I don't know the size of our wheel; I saw she was coming in contact with us, before her steering-sail came on deck, else I should not have halloed to back the steamer; she had about eighteen or twenty inches of steam on her.

The beam of the barque at her foremast, I should suppose, was sixteen to eighteen feet; I believe the steamer is twenty-six feet without wheels; our float is, I think, six feet in width; the length of the fore-yard of a barque, like the Delaware uses, about forty feet; the studding-sail boom struck us some six feet forward of our fore-rigging, on our starboard bow; our fore-rigging is some twenty odd feet from the bow; the studding-sail boom struck some of our fore-rigging, and came down on deck; it broke all of it from the end of the fore yard; came down with a part of the top of the studding-sail boom and yard, and part of the sail; this came down in consequence of the contact with the fore-rigging.

The vessel's bow was heading near fore and aft with us, about two points towards the ship's side; the vessel's jibboom went into the top of our wheel-house; the wheel guard was not broken; the bluff of her bow went under that; our wheel did not go over her deck.

Question. Did your wheel go over her deck.

Answer. It could not be possible, unless her bow went under water, as our wheel is under water some four or five feet; I had charge of the steamer at the time; some of the arms of the wheel were bent outward, round the guard, so that the wheel couldn't play; we cut them off; I should think near one-third of the wheel was lost; can't say how many floats; can't say whether iron or wooden; I should think the vessels were in contact some eight or ten minutes; the bowsprit was not broken that I know of; nor was the jib-boom, but I think all the rigging attached to it was; I think it was the bobstays or bowsprit that cut our quarter boat.

Re-examined.

I was bruised somewhat; something struck me; I never found out what; the barque appeared to be in ballast trim; a good set of ballast; I don't know how high she was from the water to her deck, but I should suppose about five feet a-midships; she would rise a little towards the bow; she is about eighteen inches higher at the bow than midships; I am still pilot of the vessel.

JOHN W. WILSON.

Re-cross examination declined.

Taken, sworn, and subscribed September 13, 1850.

CHARLES F. HEAZLITT,
U. S. commissioner.

November 29, 1850.

It is agreed that proofs of damages be deferred until after decree.

December 6, 1850.

John J. Garvin, recalled.

Question. Do you mean to say, in your direct testimony, that when "afterwards you heard in conversation that they could not back the steamer, because the iron arm of the wheel projected;" do you mean to say, that that conversation referred to the time when the order was given to back the steamer?

Answer. The conversation was after the collision, and it was after the collision that they could not back her. [Mr. Raybold objects to question and answer.]

This explanation is a voluntary act of my own.

Cross examined.

I have not seen my testimony since I was here before, until now; I

don't know that I have conversed with any one about the subject; I have not even asked their opinion about it.

JOHN J. GARVIN.

Taken and subscribed December 6, 1850.

CHARLES F. HEAZLITT,
U. S. Commissioner.

George F. Coffee, sworn. I am engineer; chief engineer of the steamer Osprey. My residence is in Front street, above Read street, Southwark. I have been engineer ever since the Osprey has been running. At first I was second engineer, but this season, ever since the ship started, I have been chief engineer. I had charge during the time the ship laid up, all winter. I was on board of the steamer on the 31st of August last, if she was running on that day. I was on board on the night of the collision. We left in the morning about ten o'clock. I judge this collision occurred in the neighborhood of eight o'clock; between six and eight; I know it was after dark; early in the evening. I was standing in front of the engine, with my wrist resting on the stopping bar at the time of collision; the stopping bar is a bar that raises the hooks that stops the engine instantly; that is, it shuts the steam off from all parts of the engine, and allows the wheel to make about half a turn; that is, at the rate at which we were going. We stopped at one-half turn; I mean to say, the engine stopped. I can't say that I recognised the voice of the captain, giving the order to stop the engine; but I heard a voice say, stop the engine. I don't know whose voice it was. At that moment the engine was stopped. After the word stop, I had the word, back! which was done immediately. After the word stop! the word come, back! I backed the engine till I felt the collision, and as soon as I felt the collision, I stopped the engine on the centre. The engine was backing at the time. The next orders I received was to back the engine again; that was some two or three, or four or five minutes: I could not tell; and I could not back her. I have got no further than that to say. I then left my engine room and went to the wheel, and found it so entangled that we went to cutting bent arms, which took us about six and a half hours, till half past two. We got under weigh, and worked our engine until we got to the city. I can say nothing further about the collision with any certainty prior to the order to stop the engine.

Question. What was the nature of the damage to the wheel?

Answer. It caused us to lose about one-half of the wheel.

Question. How long have you followed the occupation of engineer?

Answer. I have followed it in sea steamers, off and on, ever since the middle of the Mexican war; some of the time in a machine shop. I commenced about the time some of the propellers went out.

Question. Did you go out in one of those propellers?

Answer. I went out as second engineer in the propeller "Secretary Marcy," (recommended by Messrs. Merrick & Towne.) [Objected to by Mr. Campbell.]

Question. What was your occupation prior to that?

Answer. Working in machine shops.

Question. How old are you, Mr. Coffee?

Answer. I am thirty-one years of age.

Question. How long had you been at the engine before the collision occurred?

Answer. I suppose about one or two minutes; I came in front of my engine about two or three minutes before I received the word stop.

Question. Where were you before, sir?

Answer. Gentlemen, you are putting a great many questions to me; I can say nothing further to give any information. During the time I am off watch, I am running about my engine, first in one place, and then in another; when I am not asleep.

Question. Were you so engaged before on that occasion?

Answer. Yes, sir.

Cross examined by Mr. Campbell.

Question. What hour did you leave Philadelphia?

Answer. Some where in the neighborhood of 10 o'clock, I should judge; I don't know.

Question. What fuel did you use on board of your boat?

Answer. We used the Buck Mountain coal; what we call the Buck Mountain coal.

Question. Was it anthracite or bituminous coal?

Answer. It was Buck Mountain coal, of the Lehigh mountain.

Question. Was it anthracite or bituminous coal?

Answer. They pronounce it anthracite. It was hard coal; nut coal.

Question. How many inches of steam had you on your engine at the time of the collision?

Answer. I had in the neighborhood of twenty pounds, which we carry on an average.

Question. What is the speed of your vessel, under twenty pounds to the square inch?

Answer. Indeed I can't tell, sir.

Question. How long before the collision had you examined your gauge cocks?

Answer. Well, sir, it was not my watch; I thought you referred to valves; gauge cocks are tried between every two and three minutes through the watch.

Question. At what hour did your watch end?

Answer. I had not come on watch. My assistant engineer, Mr. Davidson, was standing in the engine room on watch.

Question. At what hour did the watch begin?

Answer. The watch commenced at ten o'clock; we set no regular watches until about twelve. Mr. Zane, the second assistant, was on

watch from twelve to four. Mr. Davidson, third, from four to eight; during which watch the collision took place.

Question. Who came on watch after Mr. Davidson?

Answer. I came on, sir. We all worked till about half-past two in the morning at our wheels, which allowed no regular watch set.

Question. If I understand you correctly, Mr. Davidson was running the engine at the time of collision?

Answer. He was on watch, standing by his engine, in charge.

Question. Where was Mr. Davidson at the time of the collision?

Answer. Standing in the engine room, just on my left.

Question. How was the direction "to stop" given to you?

Answer. I heard a voice say "stop the engine."

Question. Whose voice?

Answer. I can't say whether it was the captain or the pilot.

Question. Was it one of those two?

Answer. I can't say; I judge it was.

Question. What is the fastest speed you ever made in the steamer?

Answer. That I can't say to a certainty.

Question. What was the highest pressure you have ever had on her boiler?

Answer. From 25 to 28 pounds running steam, that is the highest I have run.

Question. How many revolutions did she make at that?

Answer. Well, sir, I can't tell; I have it in a log book.

Question. How many revolutions does she make with twenty pounds of steam?

Answer. Well, sir, the ship is sometimes deep and sometimes light; we can't ascertain how many turns she makes. I can't state now.

Question. Can you tell the average?

Answer. No, sir.

Question. Had you a steam gauge to tell the pressure on the boiler?

Answer. Yes, sir.

Question. How arranged; what sort of a one?

Answer. A stick gauge on mercury.

Question. What did it point to when you last saw it before the collision?

Answer. In the neighborhood of twenty inches.

Question. Was the stick full length?

Answer. The stick the right length of the gauge.

Question. The same length when it came from the shop?

Answer. It never came from a shop.

Question. The same length as when it was put on board?

Answer. The same.

Question. Does your boiler generate steam pretty fast?

Answer. Yes, sir, middling, with a blower. In respect to revolutions, when going down, with the ship deep, drawing about ten feet, she will make from twelve to thirteen in a minute; when she is light, she will run as high as about seventeen.

Question. After the collision, did the steamer heel over on one side at all?

Answer. I can't say with certainty.

Question. Who opened the safety valve when the order to stop was given?

Answer. The safety valve at that moment was not opened.

Question. How soon after was it opened?

Answer. I suppose about three minutes.

Question. Who opened it?

Answer. I can't say to a certainty; I judge Mr. Davidson.

Question. Was your vessel fitted with a cut-off?

Answer. Yes, sir.

Question. Was it in use at the time of the collision?

Answer. Yes, sir.

Question. You always run with it in use, do you?

Answer. Yes, sir. Can't run without it in present circumstances; but we can work up to a whole stroke by a single hook.

Question. Was it working up a whole stroke?

Answer. No, sir; half stroke.

Question. How was your wheel broken?

Answer. The four arms bent some four feet outside of the guard and tangled very much; nothing further, but the statement I gave you. We commenced cutting till we got our engine to work at about half-past two.

Question. Were the guards, I mean the arms, bent so that they pointed upwards, or what angle did they make?

Answer. As near as I can ascertain about the third of a circle; being night time, I did not look much to the curve or bend of it; I was anxious to get clear. One end inclined a little upwards, for I stood on it.

Question. Was there more than one arm bent?

Answer. Yes, sir; four of them. I can't say whether the whole four were bent outside of the guard. I can't say whether they did or did not; the furthest point was four feet where they extended outside of the guard.

Question. You were running along, before you received the word stop, as usual?

Answer. Yes, sir; with our usual speed. We always went with a half stroke, except in heavy head weather.

Question. Did you cut the ends of these arms off?

Answer. We cut the rivets loose from the hub of the wheel.

Question. Of how many?

Answer. Four.

Question. How many arms are there to your wheel, sir?

Answer. I don't know the right number.

Question. How many floats had your wheel?

Answer. I can't say that.

Question. How many were wood and how many were iron?

Answer. Six iron, and the balance wood.

Question. Who built the engines of your vessel?
Answer. They were built at West Point foundry, N. Y.
Question. What was your arrangement for reversing your engine?
Answer. A hand bar, acting directly on the valves.
Question. Where was the bar; inside the engine room?
Answer. Yes, sir.
Question. What did Mr. Davidson do when this call was made to stop?
Answer. I can't say, sir; my hand was at once on the engine.
Question. Did you draw your fires after she struck?
Answer. No, sir.
Question. Did you slow them?
Answer. Yes, sir.
Question. How long were your vessels hanging together?
Answer. Can't say.
Question. About how long; half an hour, or ten minutes?
Answer. I can't say; it was not an half hour, or ten minutes. I should judge about ten minutes.
Question. What was carried away on board the brig?
Answer. I can't say in regard to that; my business called me to the engine and wheels. You know how a man is at such a time; he is excited, he must look at home; and I was looking about my engine and wheel.
Question. Did you work with one wheel up?
Answer. Both wheels, sir.
Question. What is the tonnage of your vessel?
Answer. I believe they say between seven and eight hundred tons.
Question. Was she heavily laden, and how much water did she draw?
Answer. Yes, sir; and drew about ten feet.
Question. Which way was the wind?
Answer. I can't say; it was not my business to look at that.
Question. How long was it between the order to stop and the time the vessels struck?
Answer. I can't say.
Question. Can't you give some idea?
Answer. I judge from one to three minutes.
Question. That is your belief of the time, is it?
Answer. That is, to the best of my remembrance and belief.
Question. Did you get any other orders, than the two you have mentioned, to stop, and to back, before the collision?
Answer. I did not.
Re-examined. Question. How many of the four arms, which you removed, were iron?
Answer. All. All the arms on the wheel were iron.

G. F. COFFEE.

Taken, sworn, and subscribed December 6, 1850.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Martin Bulen, sworn.

Question. What is your age? Occupation?

Answer. I am 42 years of age; I have always followed the sea since I was ten years old; I am one of the seamen of the Osprey; I have been on board of her a year the 20th of last April; I recollect the collision with the Delaware.

Question. Where were you when it occurred?

Answer. I was at the helm.

Question. What was the time of day, or night?

Answer. It was after eight o'clock in the evening.

Question. Was the night bright or dark?

Answer. The night was very dark to the southard; there was a heavy squall rising to the southard.

Question. State all that occurred, as you saw it, and just as it occurred.

Answer. I was at the helm; all hands were busy forward, looking out ahead for vessels; the pilot was walking on the starboard side of the deck, a little forward of the wheel-house; Mr. Wilson was pilot; of this heavy squall nothing could be seen on board our vessel more than the light on Cape Henlopen; I don't know what course we were running, we changed the course so often when it is so dark; I think it was S. by E. or S. ½ W. The pilot was looking steady at the light, and he missed the sight of the light, and he sung out "sail ho! hard starboard your helm?" and, so quick as I could possibly get the helm up, I obeyed his orders; and, in the mean time, when I had the helm hard a-starboard, I heard a voice, "stop her! and back," and Captain Dickinson then come right into the wheel-house, and got hold of the helm, but he found it all right, hard a-starboard, and, just as he went out of the wheel-house, (I was keeping the helm steady starboard, waiting for orders,) I looked ahead, and then I saw the barque's flying jibboom coming right over our starboard bow; she hadn't struck when I first saw her; then she came right on us, and our flying jibboom went right through her lower studding sail; then she came up alongside, and carried away her foreyard, and some of the bulwark, but I couldn't see; then she struck against the wheel-house, and stopped; then there was so many passengers on deck that I couldn't tell what took place.

Question. Had the barque her sails set?

Answer. She had studding sails, and all sails set.

Question. Did you see any light on board of her before she struck?

Answer. No, sir; nor persons either; I was in my wheel-house; I couldn't see anything of her, except from lights on our own steamer.

Question. How was the wind?

Answer. The wind must have been east; the barque was on the starboard tack, running up; I can't tell exactly; we had our foreyard down, laying across the deck; I heard heavy cracks from that vessel and ours; but what was broken I cannot tell; I can't say how long we

were together; I heard Captain Dickinson's voice giving orders. I am a Swede.

Question. Anything about the collision, or before the collision, that you have not stated?

Answer. No, sir; after the barque got clear of us, I heard a voice from Captain Dickinson, and also Mr. Wilson, the pilot, both of them singing out to the barque, "back your sail, or brace your yards round, else you will come on top of us again; we can do nothing with the vessel, for the wheels are stopped; we can't move;" I couldn't see the barque; I kept the helm hard a-starboard; brought the steamer round, after making a little sail, and brought her to Philadelphia; that is all I know.

Cross examined.

Question. The whole collision was quick, wasn't it? after the pilot halloed "sail, ho!"

Answer. It was a very few minutes after the cry that the vessels struck.

Question. Did you keep your helm hard a-starboard all the time the vessels were hanging together?

Answer. I did, sir; I had to wait for my orders.

Question. Did you see the barque until the jibboom was over your oows?

Answer. No, sir; I did'nt see her before.

Question. How long was Captain Dickinson in the wheel-house?

Answer. Not one second; he came in the wheel-house and went out immediately after trying the helm.

Re-examined.

Question. Was the steamer struck on the starboard or larboard side?

Answer. On the starboard side.

MARTIN BULEN.

Sworn December 6, 1850.

CHARLES F. HEAZLITT,
U. S. com'r.

December 20, 1850.

Robert Davisson, sworn. I am about 21 years of age; I have no residence here; my people live in New Jersey; I am engineer on board the Osprey; I was on board at the time of collision.

Question. Be good enough to say where you were, and what occurred?

Answer. I was in the engine room at the moment of collision; I don't rightly recollect the time; it was in the neighborhood of 8 o'clock p. m.; the first that we heard was to stop the engine; we stopped im-

mediately; the next thing was back! and she was backed as much as it was possible for her to be. By that time the vessel had grazed the bow of the steamer, and struck the starboard guard; this, however, I didn't see, as I was in the engine room at the time.

Question. Was any one in the engine room with you at the time?

Answer. Mr. Coffee, the chief engineer.

Question. What was Mr. Coffee doing at the time the order was given to stop her?

Answer. Standing with his hand or arm resting on the stopping bar.

Question. What were you doing at the time the order was given?

Answer. Standing on the right hand side of the engine.

Question. When the order was given to stop her, what did you do?

Answer. I shut the throttle down immediately.

Question. What was the effect of shutting the throttle down?

Answer. Stopping the steam from the valves, or otherwise keeping the steam in the boiler. In all low pressure engines, with equilibrium valves, there is a throttle to keep the steam from the working valves, or rather from the steam-chest.

Question. Did you and Mr. Coffee remain in the engine room until after the collision was over; did you remain in the engine room?

Answer. I did, sir.

Question. Describe the working of the engine, and what occurred subsequently to the collision?

Answer. The first thing we tried go ahead, and got half a turn, and there the engine would stop; we tried to bring her back, and she would go just so far, and no farther, and stop. The next thing was to find out the ailment; I remained in the engine room; Mr. Coffee went to find out what it was; I was stationed in the engine room to watch the steam; I remained there several hours.

Question. How long were you in the engine room before the collision?

Answer. I can't say, but I was there at least half an hour; I can't say how much longer; I was constantly in the engine house, from half an hour before the collision until it occurred; I did not go out; that was my post.

Cross examined.

I cannot tell the space of time between the order "stop and back;" they followed each other very quickly though.

Question. Do you think there was a minute between the two?

Answer. No, sir; in fact, I couldn't tell; when the order was given to back, we backed by the hand with the hand-lever, or what is mechanically called the starting bar; I cannot tell whether there were one or more turns back before I felt the collision; from the time she struck our wheel, the engine did not work until it (the wheel) was cut away; I did not see the vessel strike the wheel; I was in the engine room.

Question. State how you know that your vessel was struck at all?

Answer. We felt the collision, and the next thing we tried to stop

and could not, and tried to back and could not; the engine would not work; I am still on board the Osprey as assistant engineer.

Question. How long have you been assistant engineer?

Answer. Five months on board of that vessel; before that time I was a machinist, at steam engine making at Merrick & Towne's.

Re-examined.

Question. It is written down in your cross examination just completed, thus: "And the next thing we tried to stop, and could not, and tried to back, and could not." Did you say that; or, if you did, did you intend to say that you tried and could not stop?

Answer. I think I said, or intended to say, that we tried to start and could not; about an hour after the accident I examined and found that the arms of the wheels were bent in such a way that she could not turn until they were cut away.

Re-cross examined.

Question. This explanation that you have given that you tried to start and could not, did that refer to before, or immediately after, you felt the shock of the collision?

Answer. After.

Question. Were the arms of the wheel bent outwards or inwards?

Answer. It would be a hard matter for me to tell which way they were bent; I can't say which way they were bent.

Question. They were iron, were they not?

Answer. They were iron.

Question. How long were they?

Answer. They are nearly twelve feet long, I judge.

Question. Did you not see them when you made the examination?

Answer. I did, but did not scrutinize them closely; I know only that they were bent so that the wheel would not turn; I can't say positively how they were bent, inwards or outwards; I can't tell how many arms there were to the wheel; I never had occasion to count them.

Question. Are they iron or wood?

Answer. They are iron, sir; the buckets are wood; the rim of the wheel is iron, and the buckets project on each side; five on each side are iron.

ROBERT DAVISSON.

Sworn December 20, 1850.

CHARLES F. HEAZLITT,
U. S. Commissioner.

Bernard R. Matthews, a witness produced, sworn, and examined on the part of the said Osprey and owners, doth depose and say: I am forty years of age, and command the steamship City of Glasgow; I have been a commander and first officer of a steamship seventeen years;

eleven years I have been commander, and six years I was first officer of the Great Western; I have been at sea altogether thirty-eight years; I shall leave this port to-morrow, in command of the City of Glasgow, for England.

Question: Have you read and considered the three documents now shown to you, marked A, B, and C, respectively, purporting to be copies of the depositions of John W. Wilson, Sparrow Harding, and Edward Lewis, witnesses heretofore examined in this case?

Answer. Yes.

Question. State your opinion, as a nautical man, of the management and course of the steamship Osprey and barque Delaware, respectively, as therein detailed, and give your reasons for any opinion which you may have formed in the premises.

Answer. The barque, in the first place, when she saw the steamer put his helm to port, and after nearing the steamer he changes the helm to starboard, which should not have been done; and another thing, very important, there was no light shown at the time they made her out to be a steamer; this should have been done immediately; on a dark night a steamboat going head to wind, as she was, it is very difficult for the look-out men to see any object, except a light, till very near them; hence, a collision is unavoidable, I should say; I give this as a nautical man.

Question. In backing a steamer, what is the effect of putting her helm a-starboard?

Answer. It has the same effect, only not so quick, as putting the helm to port when going ahead.

Adjourned till 5½ o'clock, p. m.

5½ o'clock, p. m.

Cross examined by St. Geo. T. Campbell, esq., subject to all legal exceptions.

First. The deposition was taken in the absence of counsel.

Second. It is inadmissible, as referring to and being based upon other witnesses in this cause of what purported to be copies thereof.

Third. That the evidence is inadmissible, as the questions are not put in such form as to entitle the opinion of a witness to be given in reference to the matter to be inquired of, and subject thereto.

Cross examines witness.

I read two depositions, and part of a third. I think it was on Wednesday morning last, I read them. I think it was on Tuesday last I was first applied to, to give an opinion. I was applied to by counsel.

Re-examined.

Question. Will you state, if you please, what occurred between

counsel and yourself, at the time you have spoken of just now? [Objected to.]

Answer. The counsel is an old friend of mine, and I called on him, and not knowing that the counsel had any case in hand relative to a collision; he asked me, in the course of conversation, relative to a collision case in which he was interested, and asked my opinion thereon. And the papers I have mentioned were placed in my hands, and I gave my candid opinion, not knowing that my friend was connected with the steamship or the barque.

BERNARD R. MATTHEWS.

Sworn, March 14, 1851.

J. BINNS, *Commissioner.*

William H. West, sworn.

I am between twenty-six and twenty-seven years of age. I am now master of the packet ship Shackamaxon, formerly of the packet ship Shenandoah, of which ship I was captain between two and three years. I have been since 1837 at sea; and the son of Capt. West, who commands the Atlantic. I expect to leave Philadelphia about the 13th of June.

Question. Have you read and considered the seven documents now shown to you, marked A, B, C, D, E, F, and G, respectively, purporting to be copies of the depositions of Wilson, Harding, Lewis, Dickinson, Garvin, Woodward, and Bulen, witnesses heretofore examined in this case?

Answer. I have read them all.

Question. State your opinion, as a nautical man, of the management and course of the vessels, the Osprey, and the Delaware, respectively as therein detailed, and give your reasons for any opinion that you may have formed in the premises.

Answer. My opinion is, that is, if the barque Delaware had kept his port helm, he would have passed clear on the larboard side of the steamer Osprey; or if the barque had had a light that could have been seen on board of the steamer, the steamer could have kept clear.

(F. A. Raybold, esq., objects to the deposition being taken in the absence of opposite counsel, and to the subject matter not being legal evidence, founded upon an ex parte examination of what purports to be depositions in the case.)

Adjourned till 5½ o'clock, p. m.

5½ o'clock, p. m. Adjourned till a future day.

March 21. The commissioner is notified that Mr. Raybold declines to cross examine, and the witness is discharged from further attendance.

WM. H. WEST.

Sworn, March 21, 1851.

J. BINNS, *Commissioner.*

January 13, 1851.

PALMER.
vs.
THE OSPREY.

Sparrow Harding, sr., being duly sworn, deposes and says: I am a mariner; thirty-one years of age. I have followed the sea twenty-one years. I was on board the barque Delaware, in September last, during the time of collision with the Osprey. I was chief mate. The collision took place, I should think, about six miles inside of the capes, below the buoy of the Brown. Our vessel was coming in from Boston; we were heading near N. NW., as we were coming in. The captain and myself, one passenger, Mr. Woodward, and three of the sailors, were on deck at the time we were coming in, and the second mate also. The name of the sailors was Dennis Collins, another was William, the other was John. The steward and two men were below; they were not on deck that I know of; the steward may have been in the galley. The barque is, I believe, 199 tons, and some 95ths. I wont be positive. The wind was about SE., or SE. by S. We breasted the capes near six o'clock. We first saw the steamer; we were running something like N. NW., and when we first made her she was nearly ahead, rather on our larboard bow; then we altered our course a point or more to the eastward. We supposed she had all sufficient room to pass without any trouble whatever. We still kept our course on, until we were something like a mile or more from her, when we showed a light on our larboard bow; the second mate stood on the main-rail of the larboard bow, and held the light up in his hand as high as he could; then we run for some three or four minutes after the light was shown. Then I heard the order given from the steamer to "hard a-port." At the same time I heard the engine bell ring, and the steamer shot by our jib-boom, and took our starboard anchor which was hanging on the rail. When he sung out "hard a-port," we put our wheel "hard a-starboard," else he would have struck us nearly midships. The captain (Lewis) of the Delaware gave the order to "hard a-starboard." I was standing on the house abaft the main-mast. I saw that the order was obeyed. Dennis Collins was at the wheel at the time. At the time we fetched up together with a crash, I should suppose we were heading somewhere about NW. by W. The tide was running down; that is, against us, and in favor of the steamer. We seemed to hang together; it was hard to get apart for a time. We backed our yards and got clear as well as we could. The steamer first struck the starboard anchor of the barque; the anchor went through the bulwarks of the steamer, some ten or twelve feet forward of the wheel house; the guard of the wheel took on our starboard cat-head. I was the first one forward myself, with a light, as soon as she stopped. When I first got forward with a light, I looked over the

bow to see if the wood ends were started, and to see what damage was done. Then I went back on deck a piece, and stepped into a hole in the deck made by the wheel in passing over; as it had passed over it had gone through. The whole wheel went over the deck, beginning at the knight-heads, passing over us, and from us near the gangway, midships, aft the fore-rigging, tearing away windlass, knight-heads, staunchions, fore-rigging, both standing and running rigging, bulwarks and planking, forecastle, scuttle, or gangway, and main deck; tearing up the main deck. Our fore-yard caught his fore-yard; took away our studding-sail-boom, starboard end of our fore yard, lower studding sail, and all the gear attached to it. I should think about the width of the wheel came over our deck.

I should suppose that we were going about six knots immediately before the collision. I cannot tell any thing about the speed of the steamer. When we first perceived she was a steamer, we supposed she was coming down; supposed she was a steamer from her three lights; a triangle; when we first made her out to be a steamer, I should think she was about five miles good from us. There was but very little distance from us when we first discovered she would at all interfere with us, just near enough to be seen clearly.

The steamer was right under our bows, just coming across our bows, when the order was given to "port your helm." I should suppose we were something like fifteen or twenty minutes, perhaps, in contact.

Our barque careened considerably at the time the wheel was going over her; that is, our starboard bow sunk; dropped.

I reside in Chatham, Massachusetts.

Cross examined.

I have been on board the Delaware a little over two years; I have been chief mate all that time; one trip I was master of her; a year ago this last season; I should think it was near six miles from the breasting of the cape to where this accident occurred.

When we perceived the course of the steamer, we luffed to the eastward a point or more; we did not change our course before. The night was not a very clear night, some clouds passing over; with us, just before dark, it sprinkled rain a little; the wind when we were abreast the cape was about SE. by S., nearly astern; the wind, after we changed our course, still continued astern; it was near a six knot breeze; that is not the fastest time our vessel makes. Our barque is about ninety-eight feet in length; the beam is twenty-three or twenty-four; though I don't know.

When the second mate raised up the light, the steamer was a point or more to the larboard of us. It was a large globe lantern; the largest size such vessels carry. We had no other light displayed. I saw a change in the steamer's course a very little time indeed before the collision; I got the lantern I made use of from the cabin; this

was before Captain Lewis's order to put the helm a-starboard; the lantern was shown from three to five minutes before the collision.

When the steamer struck, the second mate, who had the lantern forward, ran back and dropped the lantern for his own safety; I was standing on the cabin house; I jumped down and picked up the lantern, and the light was just burning; it revived when I held it upright.

We heard the order "hard a-port" your helm, I should think, near fifteen minutes after we first showed the light; all of fifteen minutes.

The orders, "hard a-port" by the steamer, and "hard a-starboard" by Captain Lewis, were given nigh together. I can't recollect which was first. I saw the order, hard a-starboard, executed by Dennis; but I can't recollect which order was given first. Captain Lewis was on the main deck, nearly two-thirds of the way forward; nearly abreast of the fore-rigging, on the starboard side, watching the boat. Mr. Woodward was near by him; William was forward, near the foremast; Dennis was at the wheel, and John was near by William. The name of the second mate is John Murray, he is now on board; Dennis is not now on our vessel; I don't know where William is. A sailing vessel, in my opinion, is the most easily managed when she is going by the wind.

Question. When the vessel has the wind astern and the tide against her, is she not more manageable than at any other time?

Answer. I don't exactly know. People vary in opinion; some would say that it would be, and others that it might not. The order to back the sails was given from the steamer, and was given something like ten minutes after the contact; we backed our sails; the men and the second mate were engaged in the operation; we got entirely clear after that in something like three minutes, or longer; within ten minutes.

Question. Describe full particulars of the collision from the first contact to time of separation?

Answer. As our anchor took the bulwark, merely broke the bulwarks in, and as we drew together the wheel house struck our knight-heads, and glanced along and fetched up abreast of the fore-rigging; the wheel on the deck of the barque; we still hung together; there was no parting of us by backing our yards; we separated, and as we parted our stern swung one way and the bow of the boat the other, and our jibboom came in contact with the quarter boat, and netting and railing; that was abaft the wheel, and the motion of the seas, which kept the jibboom chawing, did the damage abaft the wheel; we were going astern slowly at the time, and we separated; I don't know that I noticed whether the steamer changed her course when the order was given to change her helm hard a-port; nor do I know whether she changed her course before, but it appeared as we drew down towards each other, that we drew in a range with each other; I didn't notice particularly whether she changed her course or not; we looked as though we had sufficient room for passing each other at the time; there was no other light on deck than

that which the second mate had, and that which I subsequently had was the same light. Our sails were all set; we had only one jib, and it is rather of a small size. The barque carries jib and stay sail, two topsails and courses; courses is the foresail and mainsail, topgallant-sails, fore and main, main-royal, main-spencer, spanker, and gaff-top-sail, topmast and lower studding sail; that is all the sail we had, and these were all set except the staysail. It was a very short time before the contact, not more than a minute or so, that Captain Lewis gave the order, hard a-starboard; we were close together at the time; it was before I heard the engine bell ring; it was a very little time; they occurred nearly all together; I did not lose sight of the steamer at any time, from the time I first made her out to be a steamer; she might have changed her course, but if she did I did not notice it; I was watching her all along, but I could not tell whether she had changed her course or not; if she had kept to the westward further I should have known it, I suppose; we were some five miles off when we altered our course by luffing to the eastward one point; if we had gone clear, holding the course which we did, we should have passed to the starboard; no, I mean larboard side.

Question. Then explain how the collision occurred on the starboard side.

Answer. Well, as we drew together, the steamer appeared to draw across; we continued the same course, and as we drew together, she apparently drew across our starboard bow, and then we were too nigh to pass each other.

Question. Can you explain, in a more satisfactory manner, the mode in which the collision occurred, under the circumstances you have mentioned?

Answer. As the steamer neared us she appeared to come on our starboard bow. The captain (Lewis) was about the deck all the time. Mr. Wood was on deck; Mr. Vogdes was in the house at the time; we had no pilot on board; Captain Lewis first discovered that the steamer's course would interfere with us, and he gave the order to luff to the eastward; the order was, when we first saw the light; Captain Lewis first discovered that the collision was about to take place, and he gave the order, "hard a-starboard;" the barque obeyed her helm; we were heading N. by W., and when we fetched up we were heading N. W. by W., or W. N. W. The steamer was rather on our starboard bow when Captain Lewis gave the order to "hard a-starboard." The night, in seaman's language, would be called a broken, over-cast night; the clouds were coming from the S. E. and south, or somewhere there; it was overcast all round; if we carried a light on such nights we should be certain to be run into, or run into some one; vessels at anchor only, as far as I know, carry lights. After the collision, we got our anchor up, trimmed our sails, and proceeded on to the city.

Re-examined.

I can't say how long our bowsprit is; something like from 16 to 20

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feet, I should think; the jibboom, from the end of the cap, is about 18 feet; we were not heavily laden; it was not more than a minute, from the time the collision seemed inevitable, that the vessels struck; it was a short time, indeed; up to that time we supposed we would pass safely.

Re-cross examined.

Our jibboom still remained, but did not strike the wheel-house; some of the framing of the wheel-house went underneath the bowsprit. The frame of the wheel-house fetched up underneath the bowsprit; some of the wood remained there until we took it out; it did not stop the boat; the frame of the wheel shot underneath the bowsprit at the same time that the wheel passed over the deck, and done the damage.

Re-examined.

Question. You mean to say that the wheel-house struck the bowsprit just before the wheel passed over the decks, and not at the same time? [Objected to by Mr. Balch.]

Answer. Yes, I mean so to say.

SPARROW HARDING.

Taken, sworn, and subscribed, January 13th, 1851.

CHARLES F. HEAZLITT;
U. S. comm'r.

January 15th, 1851.

[Mr. Balch and Mr. Wharton object to the competency of the witness; Captain Lewis produces release marked A, a copy of which is annexed. Mr. Balch objects to the paper, because it is a general release, and not a release in this action, with leave to the libellants to substitute another release if deemed necessary within ten days.]

Edward Lewis being duly sworn says: I am 33 years of age; my place of residence is Yarmouth, Mass.; I am captain of the barque Delaware, and I joined her a year ago; I am captain of her now; I was on board of her at the time of collision in September last on our road from Boston to Philadelphia; the Delaware is 199 tons and some odd 95ths. On the 31st August, at 6 p. m., came in past the capes, and was proceeding on our way up the bay, noticing nothing of consequence, passing several sails, and between the hours of 7 and 8 discovered a light on our larboard bow, supposing it to be the light boat on Brandywine shoals. After waiting a few minutes, seeming to approach the light faster than usual, I took my glass to examine whether it was or was not the light boat; I stood on the bowsprit at the time; on taking the glass discovered three lights; knowing it was a steamboat, I ordered the man at the wheel to let the vessel luff one point, which order was obeyed; we then continued on our course, the light still ranging from a point to a point and a half on our larboard bow; noticing it to be a steamer positive, ordered the second mate to show our signal light, which was done; this was a globe lantern, which con-

tains a lamp with two wicks in it, and measuring some twenty-two inches in circumference. At this time, I should judge, the steamer was from one to two miles off, the steamboat still nearing us; she got within a half or quarter of a mile from us before we perceived any alteration in her course; we then perceived that she undertook to cross our starboard bow; the steamer was going down, and the barque was coming up; I all at once discovered that the steamer slewed her head round to the eastward so as to cross our starboard bow; I then ordered our wheel to be put a-starboard, when I perceived that he changed his course, which order was obeyed; if I had not given that order we should have been to the bottom; the steamer would have struck us about midships; the effect of my order was to change the direction of my vessel, which brought her nearly parallel with the steamer; the steamer passed in clear of our jibboom and bowsprit, her bow passing ours about twenty feet, when she struck our anchor, taking that off the bow, passed along until her wheel-house and her wheel came in contact with the knight-heads of the barque, which were broken off, also main-rail, windlass, fore-rigging, her wheel passing over our deck from the knight-heads to the foretopmast-backstays, breaking through the deck, and leaving portions of the wheel upon the deck; it took away our foreyard and lower steering-sail and gear attached; the order I gave when I saw the steamer approaching was "hard a-starboard," that means to heave it hard a-starboard. My object in giving that order was to avoid a collision; I heard an order given from those on the steamer to "hard a-port" just before she struck us, and when within a very short distance I heard her engine bell ring; nothing else from the steamer until after the collision; I heard no other order given from the steamer up to the moment of collision than that I have named; I did not discover the collision to be inevitable until we were within 120 feet of the steamer; previous to that time, it was my calculation that the steamer would pass to the larboard; it is a customary thing that where two vessels running, one going in one direction and the other in another, with a wind so that they could both go on their course, to pass to the larboard; I do not recollect anything else that occurred at the moment of collision. After we came together there was a deal of confusion; the wheel of the steamer struck our knight-heads, rolled itself over our deck and off; she went off I should think; her wheel passed off just forward of the fore-rigging; all four of the shrouds of the fore-rigging were carried away; the back stays still remained; my first order then was to try the pump, to see whether the ship leaked or not; my next was to clear away the boat, supposing the barque was in sinking condition, but after trying the pump found that she made no water. I then ordered our topsails thrown a-back, to back out from the steamer, to back off, and, after backing our topsails, our jibboom and bowsprit came in contact with the quarter-boat of the steamer and wheel-house together; the quarter-boat was immediately abaft the steamer's wheel-house; I don't know exactly what distance it was abaft the wheel-house; we then swung off clear from the steamboat; we then took sail off of the

ship, rigged tackles, and took our anchor to the bow; the captain of the steamer then asked me if I should proceed on to the city; I answered him, yes. He then asked me to report the Osprey disabled, and could not return; that is all the conversation that passed between us. This collision took place about seven miles above the capes; not far from that. The course of the barque, after we breasted the light, was N. N. W.; the course we generally run was N. W., but then, in coming up the bay, we always have lights to set us in our course, if we get off that course; sometimes the tides set us one way and sometimes another. The steamer with which we had the collision, was the Osprey, Captain Dickinson. The wind was from the S. E.; we were probably going through the water at the time four knots. The tide was running ebb. From the manner in which the steamer approached us, I should think she was going at the rate of 10 or 11 knots; as fast as that. When we first saw the steamer, we were between five or six miles off. I was at the bow of the barque after I discovered the light. I am not able to answer whose watch it was; I was on deck; my mate and second mate *was* on deck, and three of the men. I can't name them, I have forgotten their names.

Question. Was Dennis Collins one of them? [Objected to by Mr. Wharton and Mr. Balch.]

Answer. I wouldn't like to say positively. I can tell, by referring to the articles, what their names were; I don't think I could remember their names if they were repeated to me. Neither of those three men are on board of my vessel now, nor do I know where they are. Mr. Woodward, a passenger, was on deck; there was not any one else, that I noticed, on deck. Mr. Woodward was standing alongside of me, from the time I discovered the steamer till he thought there was danger. I do not know where the steward was, but I think he was in the cabin. We had another passenger, Jas. Vogdes; I am not able to say whether he was on deck or not. Our crew consisted of nine, all told. After the collision we come up to the city, and arrived next day between 11 and 12. I am not able to say how long the barque was here undergoing repairs, but I think about three weeks. I have followed the sea seventeen years; that is, not all the time, but seventeen years off and on.

Question. To what, captain, do you attribute the collision?

Answer. To the steamer altering her course.

Cross examined.

I am not able to say how long our vessel is; I should think about ninety-six feet. Her beam between twenty-one and twenty-three feet; not far from twenty-one feet. There was a moderate breeze blowing at the time, and the sky was overcast. I did not observe which way the clouds were moving, but I suppose, of course, they moved with the wind. We had a shower in the afternoon; none in the evening. We should not call it an uncomfortable night. It was not a very dark night, nor was it very light; it was middling; we could see vessels passing.

We breasted the capes about six o'clock, and the collision was between eight and nine—about half-past eight. I think we were about six or seven miles from the capes when we first descried her, the steamer, probably eight miles below the Brown shoal. No, I am mistaken, I thought you meant Brandywine shoal; we were above the buoy of the Brown. I mean above the buoy of the Shears, and not above the buoy of the Brown. Our course, when we came abreast of the cape, was N. N. W.; our course, after I gave the order to luff a point or so, was N. by W. It might have been twenty minutes, and it might be longer, from the time I gave the order to luff to the time I gave the order "hard a-starboard;" I can't say positively. Our course, when we put our helm a-starboard, was N. N. W. After we put our helm a-starboard there was no course, we were wearing off constantly until the collision. I should think I was three miles off from the steamer when I discovered her positively to be a steamer, though it is a hard thing to tell exactly; it is a hard thing to tell on a dark night. The second mate got the signal lantern; I ordered it to be exhibited; he got it from the cabin. He was standing over the larboard cat-head, on the rail, when he exhibited it. The order was given to exhibit signal lanterns, immediately after the discovery that she was a steamer. It took him probably five minutes, or probably eight minutes, before he got the light up. We discovered nothing positive of the course of the steamer. We kept on our course, and she still kept on our larboard bow. It might have been two or three minutes before the collision that I noticed an alteration in her course; it was a very short time; then she undertook to cross our starboard bow, and I ordered our helm "hard a-starboard;" this was not more than three minutes before the collision. The order from the steamer, "hard a-port," was after the order given by me to "hard a-starboard," but a very short time, about a minute. I should think we exhibited our signal lantern about five minutes before the collision; it is hard for a man to set time exactly at such an excited time as that. I did not anticipate danger when I exhibited our lanterns; the excitement was after exhibiting the light. We exhibited the light before the steamer changed her course, and on our larboard bow. I was not standing in any particular spot on deck at the time of collision; before the collision I was standing on the heel of the bowsprit, and just before she struck I made the best of my way aft. We went forward afterwards, when we found we were all alive, and examined the wound; we remained forward from five to ten minutes; after that I went aft, and ordered the men to heave the yards back. The order to heave the yards back was given not far from ten minutes after the first contact, and this was not done in consequence of any order from the steamer. In all cases each man considers himself master of his own ship, and takes his own time.

At the time of the collision, I am not able to say where Mr. Harding was; after the collision, he went forward; took the lantern and went forward with me. The second mate left his station in the bow of the ship, where he was standing with a lantern, about the same time that

I did; I ordered the second mate, after he went aft, to clear the boat. The first I saw of the lantern, after the collision, the mate had it in his hand. I think Mr. Woodward, the passenger, was at the pump. Some of the men at the pumps, and some with the second mate, to clear away the boat; I am not able to say where they were standing at the time of the collision. I did not lose sight of the steamer from the time I first saw her, up to the time of the collision; I do not know that she changed her course, before she altered it to cross our bow; there was no alteration in her bearings from our bow, where I stood; I should think I should have noticed [it] if there had been. I can't tell when I first went below after the collision; I guess not till the next morning; our cabin is so situated that we don't have to go below, it is on deck; I don't recollect going into the cabin until I went to breakfast. I give the orders to try the pumps, as soon as it could be given; it was the first order after the collision; I am not able to say who executed the order; the order to clear away the boat was repeated directly after the order to try the pumps; the second mate was the man I gave the order to. It might have been ten minutes or more, from the time that order was given, until the order was given to throw the top-sails back; there was a general mustering among all hands to execute this last order. The guards of the wheel-house was over the deck of the vessel at the time I gave the order to heave the yards back. Our vessel carries jib, fore-top-mast, stay-sail, fore-top-sail, fore-top-gallant-sail, main-sail, main-top-sail, main-top-gallant-sail, main-royal, main-spencer, spanker, gaff-top-sail; we have steering sails, which we set when we think proper; they were set; all the sails that I have named were set, except the main-sail, which was hauled up the yard. I think I was standing not far from the mainmast aft, when I gave order to back the yards.

Question. State the position of the vessels from the commencement of the collision until they separated.

Answer. The bow of the steamer had passed our bow about twenty feet, when she struck our anchor, throwing it off the bow; it was in our starboard cat-head, lashed solid; she then passed along until her wheel-house and wheel fetched up against our knight-heads; her wheel then passed over our deck, and off just forward the fore-rigging, that is, as nigh as I can trace it by the marks; and after heaving the top-sails back, it brought our bowsprit and jib-boom over his wheel-house and quarter boat, and remained in that position until we backed clear. It was near about fifteen minutes from the time we first struck, until we backed clear; it was in the act of backing off that brought our jib-boom and bowsprit in contact with the wheel-house and quarter boat; I think it was about fifteen minutes from the time of collision that we got clear, and not more than five minutes from the time I gave the order to back the top-sails. I do not recollect repeating my order "to hard a-starboard;" and I think Dennis was at the wheel; Dennis Collins, as near as I can recollect. I am not able to say the course of the steamer when I first descried her, but I should think S. by E.; we could not make her course out positively at no time at all. The wind was a fair wind, fair upon our starboard quarter; we were going through

the water about four knots; it don't depend which way the wind was, but it is the strength of the breeze. I am not able to say when I first saw Mr. Vodges after the collision; he was around deck with us the first part of the evening; I had not missed him long. After the collision, I think I saw Mr. Woodward at the pumps, but I am not positive. Our rail is between three and four feet from the deck. My second mate is about six feet high, and he held the light up in his hand, that is, it was about ten feet above the deck; he stood there not far from five minutes; he left his post about the same time I did, and not more than half a minute before the collision.

Question. You have said, captain, that "it might have been two or three minutes before the collision, that it was a very short time before, that you noticed an alteration in the course of the steamer:" had the two vessels preserved their course without alteration, would, or would not, the collision have occurred?

Answer. It would not.

Question. If you had put your helm a-port, instead of putting it a-starboard, what would have been the effect on the two vessels?

Answer. The steamer would have struck us amidships, and sunk us.

Question. Please explain that.

Answer. By putting our wheel to port, it would have brought the head of the vessel to the eastward, and, by his wheel being starboard, would also have brought the head of the steamer to the eastward.

Question. In this explanation that you have given, you make no allowance for the steamer backing at the time that she put her helm a-starboard; if such were the fact, would not your putting your helm a-port, as the steamer hailed to you to do, have kept the two vessels apart? [Mr. Raybold objects to the question, as stating a fact not in evidence.]

Answer. It would not.

Question. Please give your explanation of this last answer.

Answer. I believe your question, "that if the steamer was backing or going astern," had the steamer been going astern at the time, it would have made no difference which way we put our wheel, as we were not moving over the bottom more than 2½ or 3 knots; we should have gone clear of her, with our wheel either to port or starboard, if she had stern way.

Question. What would have been the effect on the steamer if she had put her helm a-starboard while she was backing; which way would it have turned her bow?

Answer. It would have turned her bow to the eastward very slowly; have but very little effect.

Question. Do I understand you to say that putting the steamer's helm starboard would have produced the same change in her bow, whether she were backing or going ahead?

Answer. It would produce the same change, but not so rapidly, give it sufficient time.

Question. What would have been the effect, as regards the steamer, of putting her helm a-port while she was backing?

Answer. It would have brought her head to the southard.

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Question. What distance were you from the steamer when you put your helm a-starboard?

Answer. I should think, to the best of my judgment, a quarter of a mile; it may not have been so far.

Re-examined.

I put the light on the larboard bow, because the steamer was on the larboard bow, so that nothing could obstruct the steamer's view of our light; I should think about 5 or 6 feet of the steamer's wheel came over the deck of the barque.

EDWARD LEWIS.

Taken, sworn, and subscribed, January 15, 1851.

CHARLES F. HEAZLITT,
U. S. Commissioner.

Joseph A. Woodward, being duly sworn, deposes and says: I am in my 28th year; I reside in the city of Philadelphia; I am a merchant; I was a passenger on board the barque Delaware, on her passage from Boston, in the latter part of August, or beginning of September, 1850; I was on deck when the barque breasted the Cape Henlopen lights; Captain Lewis was on deck; we come in about dusk. After the supper hour, all three of the officers were on deck—the captain, two mates, and two of the men, I know; we took supper before we got inside of the bay; we were running the two lights up, that is, the two Cape Henlopen lights, as is usual in most cases; Mr. Harding, the first mate, called, "the light boat;" Captain Lewis and myself were walking on the deck at that time; we passed forward on the starboard bow of the vessel: Captain Lewis remarked, that that was the light-boat; I cannot form any idea of how far we were from the light-boat at that time; there was nothing further occurred until, again being on the starboard bow, I observed three lights; I immediately gave notice to Captain Lewis that I saw three lights; he stepped immediately into the cabin, which was on deck, for his telescope; he went forward, and examined the lights with his glass, and said it was a steamer coming; he then ordered the vessel run a little off her course, so as to bring the steamer on the larboard bow; he ordered Mr Murray, the second mate, to pass a light forward as quick as possible; a few moments afterwards I went to the cabin to hurry Mr. Murray forward with a light, which he was just putting in a globe when I got to the cabin; he had it lighted; I passed forward with Mr. Murray, and told him to hold the light as high as possible, while passing forward; when we got forward on the larboard bow, I saw that the steamer was very close to us; supposing that she would come in collision with us, I ran to the cabin to call my brother-in-law, Mr. James C. Vogdes, who was also a passenger with us; the steamer was, at that time, on our larboard bow; after calling Mr. Vogdes, and seeing him get up, I immediately turned out of the cabin, and as I passed through the door of the cabin, the two vessels came in collision; the steamer struck the

barque on the starboard bow; the wheels passed over the deck of the vessel as far as the fore-rigging; I did not see the steamer when she first touched the barque; it was too dark to see it; I heard it; the barque careened when the wheel crashed on to the deck; the two vessels struck in the bow; the bow of the steamer, I presume, struck the anchor of the barque first; I heard no orders given on board the steamer, and no noise whatever until she was certainly within 100 yards of us; I then heard the engine bell; I heard also a person on board of the steamer give a command of "hard a-port;" I also heard Captain Lewis say "heave the wheel hard a-starboard;" this was after the command of "hard a-port" from the steamer.

I presume the barque was making before the collision about 5 miles an hour; we had a free wind; the tide was either against us, or on the change; it had been against us, I know, a short time before.

Question. Can you give any idea of the speed of the steamer just before the collision?

Answer. I should suppose about ten miles. I could not know the speed of the steamer. I could only judge, from my knowledge of steamers, the usual running rate; which I should suppose could easily be ascertained by her average running rate from port to port.

I also judged from her speed with which she approached us. It was not over fifteen minutes from the time Captain Lewis certainly discovered her as a steamer until she struck us. As a landsman, I am not a very good judge of distances and time at sea. I believe pretty much all the sails were set on the vessel; there were two steering sails set on the starboard side.

The steamer, when I saw her, was on our larboard bow. The steamer was coming almost head to head, but still on our larboard bow. I thought she would have passed us on the larboard bow.

Question. Can you tell how long before the collision the steamer so showed herself, that she appeared to be crossing the starboard bow of the barque. [Objected to as leading and as implying that the witness has stated that which he has not.]

Answer. I can't tell, only from supposition, because from the time I started to go to the cabin, I think, until the vessel struck, it could not have been more than three or four minutes; the steamer's course must have been altered during that time; when I went to the cabin she was on our larboard bow; and when I came out she was on the starboard. [Objected to as not being the opinion of a nautical man.] The vessels were together about fifteen minutes, I think. Our pumps were tried, and we found that the vessel was not leaking badly.

The captain of the steamer asked us if we were going to proceed up, and requested us to report him "disabled and unable to return."

Question. In your judgment, to what cause was the collision owing? [Objected to as not the opinion of an expert, and the witness has testified that he was absent when the collision occurred.]

Answer. Well, sir, I should suppose that on board the steamer they did not see us until they were too near to avoid a collision.

The steamer, from the time I went into the cabin until I came out again, was not out of my sight more than a minute.

From what I saw on that occasion, I believe the steamer had head way up to the moment of collision. My impression is, that the engine was running forward at the time of the collision; I did not notice the rolling of the wheel upon the vessel; I could not see it; but one thing is certain, that after the wheel struck the bow of the vessel she could not make any more revolutions; I did not hear any other orders on board the steamer than those I have stated; from before dark that evening there was a good look-out kept on board of the barque; a man at each bow, and Captain Lewis and myself were walking the deck, I believe, almost the whole time.

Cross examined.

We breasted the lights about seven o'clock; the collision took place between eight and half-past eight; about eight, or a little after. The sky was cloudy; the wind, I presume, from the southward; we were running before the wind.

I think Mr. Harding called the "light-boat" about half to three-quarters of an hour after we breasted the light; this light turned out to be the steamer; we were expecting every moment then to make the "light-boat; Captain Lewis did not say how far we were from the light; from the vessel presenting two lights she could not have been coming directly at us; if she had, you would have seen her three lights; I observed her three lights not more than fifteen minutes before the collision, perhaps less; Captain Lewis went from the starboard bow to his cabin for his telescope and returned instantly, as quick as it could be done; not half a minute; he came back to where we were standing; I don't recollect whether I had shifted my position; I was alongside at the time he looked with his glass.

I should think it was from one to three minutes from the time of the order until I went to the cabin to Mr. Murray about the light; I went forward with Mr. Murray and the light; I should think, when Mr. Murray got forward with the light, the steamer was not over a hundred yards off; I suppose that from the mere fact, from the time that it would take me to go to the cabin and call Mr. Vogdes and return immediately.

Orders might have been given on board the steamer while I went after Mr. Murray, and I have not heard them; I went for Mr. Murray on my own responsibility, and not from any order from Captain Lewis; I saw the steamer was coming towards us, and I was anxious to have a light forward; I was the first to discover the three lights, but I did not know that it was a steamer; when I saw the three lights I asked Captain Lewis, (went back to him,) asked him whether the Brandywine light came on a line with the light-boat; he said "no;" then he got his telescope, as I said before; I was on the starboard bow of the vessel when I discovered the three lights; I can't tell what the courses of the vessel were; in any of these matters I don't profess to state the times positively.

After the collision our fore-yards were across the steamer, and some one on board the steamer ordered us to clear them; the yards were not cleared; Captain Lewis said to me that he wouldn't do it until he saw whether we were sinking or not; in coming up the next day I asked him his reason for not backing his yards, according to the order; he said that if he were sinking it was our only chance of escape to get on the steamer.

Question. When the steamer was, as you say, "very close to us, and on our larboard bow," just before you went into the cabin, in what direction was the bow of your own vessel pointing?

Answer. I have stated before that I didn't know the direction; I think that if both vessels had gone on as they were then, they would have grazed each other on the larboard side of each.

Question. When you came out of the cabin, which, as you said, was just at the time of collision, or instantly before, in what direction was the bow of your vessel pointing?

Answer. That is a very hard question to answer; it must have been much the same as before.

Question. Had not your captain, before the moment of time I have just referred to, ordered your helm to be put hard a-starboard?

Answer. He did order the helm hard a-starboard; but I don't know whether it was before or after I went in the cabin; I think it was while I was passing from Mr. Murray to the cabin; I am not certain.

Question. Would not the effect of putting your helm hard a-starboard have been to bring your bow round to the westward, and thus fetch the steamer on your starboard bow?

Answer. Yes, sir.

Question. If such as I have stated were not the case, inasmuch as you have not been able to say positively that your helm was put a-starboard, before the point of time to which I have been drawing your attention, I wish you to say how the steamer could have come upon your starboard bow?

Answer. Simply by the steamer putting her wheel hard a-starboard, and I presume that must have been done.

Question. Did you hear any such order on board the steamer, or do you know that such was the case?

Answer. No, sir; I heard no such order, and I don't know that such was the case.

We had no pilot on board of our vessel.

Re-examined.

We passed a brig about half an hour before the collision, on our way up; she passed from the starboard to the larboard side.

JOSEPH A. WOODWARD.

Sworn and subscribed, February 26, 1851.

CHARLES F. HEAZLITT,
U. S. Commissioner.

2774.

Dennis Collins, sworn.

I am in my 30th year. I follow the sea, and have been following it for the last eleven years; sometimes I work ashore. I am now employed in the barque Mary, owned, I believe, by Lincoln & Co. I was at the wheel in the barque Delaware, when she had the collision with the steamboat Osprey. I went to the wheel at eight o'clock in the evening. I suppose it may have been about twenty minutes, or half an hour after, that the collision took place. The barque's head was about north, half west, at the time. The first I saw of the Osprey was a light on her starboard bow. No, I did not say that. I can't say how far the Osprey was from us, when I first saw her; when I went to the wheel, I saw a light on her starboard bow, then the light came on our larboard bow; we were going up and she was coming down. Then the captain told me to put the helm a-port. I suppose he found out it was the steamboat. I suppose on seeing the light on our larboard bow he put the helm a-port that we might go clear of her. I heard the order given to port the helm; if I hadn't I would not have altered it. The steamboat then was coming right into our waists, amidships. I had the helm a-port at this time; the captain then told me to starboard the helm; hard a-starboard. The cause of this was to clear the steamer, which was coming right into our waist. I heard no order given to the steersman on board the steamboat. I should think the steamer must have altered her course after I first saw her, because the light was first on our starboard and then on our larboard; still I did not know it was the steamboat. I did not know what kind of a boat she was until she struck us. Our head was towards the Delaware shore, as our helm was hard a-starboard; and the steamer was pointing towards the Jersey shore, when the two bows came together. I can't tell what point of the compass the barque was heading; as to the steamer, I know nothing about her. The two boats came together, and the steamboat stove the Delaware in. I seen part of the steamboat's wheel on the deck of the barque next morning, when we were clearing away. I can't say whether the Osprey, can have been on the same course as when she struck us, when I first saw her.

Cross examined by counsel for the Osprey.

I was on board the Delaware, from some time in June, 1850, until some time in November last. I cannot recollect the day of the month when this collision occurred. I was below when we breasted the capes. I came on deck at eight o'clock, and then took the wheel. The barque was then heading north half west. The wind was about southeast; had the fore-top-mast and lower studding-sail set on the starboard side. There was a very good breeze of wind; we were going, I should think, six or seven knots. The sky was not to say very dark; I have seen it darker, and I have seen it clearer. Our cabin was on deck, and the wheel was abaft the cabin. As near as I can remember, it was somewhere between twenty and twenty-five minutes after I took the wheel

that Captain Lewis gave the order to port the helm. I can't say certain; as near as I can speak, it was five minutes from the time that Captain Lewis gave the order to port the helm, to the time that he gave the order to put the helm a-starboard. It was not more than three minutes, perhaps not that, from the time that Capt. Lewis gave the order hard a-starboard, to the time the actual collision occurred. Our wheel-house is so situated that I cannot see all that goes on before me. I can see ahead of the vessel, but not from stem to stern. I can see part of the deck and ahead of the vessel. When I went to the wheel my attention was attracted to the light, which afterwards turned out to be the steamer. I saw the light myself; when I first saw it, on our starboard bow, it ranged about a quarter of a point; it was nearly ahead; it was about ten minutes, or thereabouts, before I saw it on our larboard bow. It ranged about three-quarters of a point on our larboard bow. I don't know whether it continued that range; I can't say. It was after we saw it on our larboard bow that Captain Lewis gave the order to port the helm. When we ported our helm we luffed a little. I can't say how much. I luffed until he told me to steady. I can't exactly say what was our point after we luffed. I cannot tell our actual point of heading when we struck. After Captain Lewis gave the order hard a-starboard, we were wearing away all the time. We had a light in the binnacle, and the second mate had a light in his hand. I am sure of it; the binnacle is behind the cabin; I suppose the second mate got the light from the cabin. I saw the light forward in his hand. He got it before the collision took place. I saw him go along on the larboard side. I suppose it was five or ten minutes between the time when I saw the lights on our starboard bow, until I saw it on our larboard bow. During that time we were heading north half west, all the time. We did not change our course until we got orders from the Captain. We steered the same course from the time we first saw the light until the captain told me to put the helm a-port; running before the wind there is no man but what will vary a little, but still he will steer the same course though. Sometimes our variation would be a quarter of a point each way. The captain during all this time was on deck, walking on the top of the cabin-house.

Again re-examined.

I believe that Mr. Burns, who was in the Delaware, is now on his way to California; I think he went about New Year. There was another named Donelly; I don't know where he now is; I last saw him in Boston on the 23d of December last; if we had not put our helm a-starboard when we did, I think we should have been run down.

DENNIS COLLINS.

Sworn and subscribed at Philadelphia, in the eastern district of Pennsylvania, March 15, 1851, before me.

JOHN BINNS,
U. S. Commissioner.

March 27, 1851—7½ o'clock.

William H. Rotan, being duly sworn, saith: I am 32 years of age, am a ship carpenter, and reside in Queen street, below Hanover, Kensington.

Question. Did you see the barque Delaware after the collision between her and the steamer Osprey, about the first of September last; if so, please state when and where you saw her, and what was her condition, and what injury was done to her by the collision.

Answer. I saw the barque shortly after she hauled to Palmer & Waldron's wharf, below Market street; her bow timbers, (starboard bow timbers,) knight-head, and stancheons, and rail, of course, and bow-chocks over the bow-sprit and windlass, were torn away; deck partly knocked down, and one or two beams partly broken, pieces broken off; then the water-ways and plank shear were broken.

Question. Was the damage which you saw occasioned by a collision?

Answer. I saw the barque two days after the collision (as was said) had taken place between the barque and a steamer. I don't know anythink about the collision of my own knowledge.

Question. Did you see on the deck, or on the timbers of the barque Delaware, any marks of the wheel? If yea, describe the same fully.

Answer. The deck was broken in by something, as I have before said, and pieces of iron lay about. These pieces were about the size as are commonly used in steamboat wheels of the kind of the Osprey, and I at that time judged them to be pieces of the iron of her wheel. These pieces were, I suppose, about 12, 15 to 18 inches long, about three-fourths of an inch thick, and three or four inches wide; there were several pieces; the carline was broken; it is a small beam between the two large ones, and runs from the mast to the side of the vessel; it was broken, I think, about 4 or 4½ feet from the side of the vessel.

Question. How, and in what manner, were the timbers and the deck broken?

Answer. I should think the timbers were broken by being crushed in, and the deck was broken by something heavy coming down upon it.

Question. From the appearance of the deck and timbers, in what manner would you judge the injury to be done?

Answer. The vessel did not appear to be struck below deck at all, the injury appeared to be above deck, and crushing down from above, and such injury would likely to be done by a large wheel running over it.

Question. Look at the sketch marked A, (C. F. H.,) now shown to you, and say whether it is a correct representation of the deck of the vessel, as injured.

Answer. It is a correct draft, but don't show the timber as it was laying about deck. The windlass was pushed aside, as represented here.

Question. Have you seen the steamer Osprey?

Answer. Yes, sir; many a time; she is large, high out of the water

Question. Could the injury to the barque, as you saw it, have been

done by her striking against the wheel of the steamer Osprey, while the steamer was backing from the barque?

Answer. I should not think it could.

Question. Had the wheel of the steamer been backing from the barque at the time of collision, would it not have been shown by the appearance outside of the barque, below deck?

Answer. Yes, sir; I should think it would.

Question. Did you do the repairs to the Delaware; and if so, how long did it take to make such repairs?

Answer. I did repair her, and I think it took four or five weeks to repair her.

Question. How long have you followed the business of ship carpenter?

Answer. Sixteen years, apprentice and all.

[Mr. George M. Wharton and Mr. Balch objected to the competency and relevancy of the foregoing deposition.]

W. H. ROTAN.

Taken, sworn, and subscribed, March 27, 1851.

CHAS. F. HEAZLITT,
U. S. Commissioner.

United States district court, eastern district of Pennsylvania, in admiralty.

PHILADELPHIA AND ATLANTIC STEAM NAVIGATION COMPANY vs. THE DELAWARE.

PALMER vs. THE OSPREY.

Opinion of Judge Kane.

These cases* involve the same question, and may be properly considered together. The rules of navigation, which we derive from the Trinity masters, apply to all cases of apprehended collision, and they are so convenient in practice as to make us most unwilling to relax their application. But to make them applicable at all, there must be reason for apprehending collision, as well as a possibility of escaping it without encountering some greater peril; they cannot be invoked therefore where obedience to the rules has been made impracticable or dangerous by the fault or carelessness of the other party. There is no law which requires vessels navigating the high sea after dark to carry signal lights, and very much it is to be regretted. I can imagine no locality so remote or unfrequented, as to dispense with the policy of such a practice. There is hardly a month that we do not read speculations

*There were other cases, involving the same question, and decided at the same time.

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about missing ships, especially ships navigating along our coast, and almost every old seaman can tell of encounters in the night with vessels that were run down and disappeared, leaving no memorial behind them. I should be very glad to follow in the wake of the first admiralty judge, who would hold the absence of a properly placed and well trimmed lantern to be prima facie evidence of a culpable want of caution. In our narrow waters, however, a sense of danger has enforced upon our navigation the adoption of something like a general usage, and the legislatures of some of the States have, in reference to steamers at least, made it the subject of enactments. Thus it seems to be universally understood, that a vessel approaching another in a dark night, should show a light, or, in more accurate words, should show such a light, and in such a place, as to indicate at least her position, if not her course

The act of Congress of 7th July, 1838, section 10, which requires steamers to carry one or more lights after sunset, is practically almost inoperative for want of specifying their number and position. Our Pennsylvania act of assembly, 30th April, 1844, is little better; it directs a steamer to carry one signal lantern at least ten feet above the deck; an imperfect provision, since it omits a description of the sort of lantern, and obviously does not affect to indicate the steamer's course. The New Jersey statute is better than these. It requires steamers to carry two signal lanterns, one at the bow near the deck, the other aloft amidships; a much better provision than either would be, that which some of our sea going steamers have adopted in practice from the British rule, according to which three lights of different colors are carried at the bow and on the wheel houses. Indeed, so important is some such regulation as this, esteemed among the navigators of our river and bay, that I have been solicited more than once to assume its existence and enforce its observance. I would cheerfully do so, if I could find it among the ordinances of any legally constituted tribunal; the directions of the port wardens for instance, who have in some respects the supervision of our river navigation, or if the practice recently introduced by our sea going steamers were, to a considerable extent, recognised by others. For the present, I confine my action in the matter to the two classes of cases for which statutory provision exists, or generally known usage. The cases before me are within this category.

The evidence in these two cases of collision is not reconcileable as to the circumstances that immediately precede them. In the case of the Osprey and the Delaware, thus much only is certain. The Osprey steamer was on her way to sea with her signal lanterns in place, heading for Henlopen lights. The barque Delaware, without any lights, came into the capes from the eastward, with the wind free to pass up the bay. The sails of the barque shut out the Henlopen lights from the pilot of the steamer. The barque was at this time, of course, heading to the starboard of the steamer's wake. The proper manœuvre on the steamer's part at this time was, by an inclination of her helm to port, so as to keep further out of the barque's track. This manœuvre she

executed, but the barque having executed the same manœuvre at about the same time, the two vessels approached each other. The difference between them was, however, in this, that the steamer exhibiting signal lights, her position and course could be well understood by the barque; but the barque exhibiting no lights, and having been last seen when heading to starboard of the steamer's wake, the steamer had no means of ascertaining the barque's approach, and no cause for apprehending a collision. A light was shown on board the barque very shortly before the collision took place; but it does not appear to have been seen by the steamer's pilot at all; and I have a strong opinion that it was not exhibited until the collision had become inevitable. But whether it was or was not exhibited early enough to make it strictly possible for the steamer to avert the accident, is not with me an important inquiry. The steamer had her full complement of lights, and it was impossible that the barque could have incurred any hazard at all, if she had been content to hold her course, instead of luffing up as she did across the steamer's bows, obviously for the purpose of keeping well up to windward. Had she had lights, she might have done so with safety. Having none, she voluntarily took the risk of the collision, and must reap its fruits.

The decree, therefore, in the two cases of the Philadelphia and Atlantic Steam Navigation Company vs. the Delaware, and Palmer vs. the Osprey, must be against the Delaware and her proprietors, with costs; and it must be referred to the commissioner, Mr. Heazlitt, to ascertain the damages.

Filed January 30, 1852.

Mr. G. M. WHARTON and
Mr. BALCH,
For the Steamship company and the Osprey.

Mr. WILLIAM B. REED and
Mr. ST. GEORGE E. CAMPBELL,
For Palmer & Co. and the Delaware.

And the said commissioner afterwards, to wit, on the nineteenth day of March, 1852, makes and files his report in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania.

THE PHILADELPHIA AND ATLANTIC STEAM NAVIGATION COMPANY
vs.
THE DELAWARE.

The undersigned, to whom it was referred to assess the damages sustained by the libellants in the above case, respectfully reports:

That on the third day of September, A. D. 1850, the Philadelphia and Atlantic Steam Navigation Company filed their libel against the

barque Delaware; and on the thirteenth day of September, 1850, a cross libel was filed by Palmer and others against the steamer Osprey; both libels being for collision. After hearing, the court decided, on the 30th day of January, 1852, in favor of the steamer, and against the barque.

That he has been attended at divers sessions by the proctors for the several parties. The following claims were presented:

1st. Claims for repairs.
2d. Expenses, demurrage.
3d. Passenger money lost.
4th. Counsel fees.

And authorities were cited in support of each item.

Items 2 and 4 were objected to by the proctors for the respondents. The account No. 2, for expenses and demurrage, is stated as follows:

Account of three day's demurrage of steamship Osprey, occasioned by collision with the barque Delaware:

1. Pay of officers and crew - - - -	$96 64	
Provisions for officers and passengers - -	46 12	
Coal for 24 hours, at ½ ton per hour, 12 tons at $4 - - - - - - - - -	48 00	
Wharfage 3 days, at $6 - - -	18 00	
Insurance 3 " at $3,606 per annum -	29 62	
Interest on cost, $51,202 56, 3 days - -	256 01	
		$494 39

September 3d, 1850.

2. Account of loss by passengers occasioned by above named collision:

August 31, 1850.

Amount of way-bill, cabin passengers - -	$1,420 00	
" " steerage " - - -	140 00	
		$1,560 00

September 3, 1850.

Amount of way-bill, cabin - - -	800 00	
" of " steerage - - -	70 00	
		870 00
		$690 00

Referring to the second item of this account, it will be seen that the loss by passengers is charged six hundred and ninety dollars, without giving any credit or allowance for expenses in earning the same. The libellants are not to sustain loss by the act of the respondents; they are to be fully indemnified. In order to make this indemnity complete, they charge the whole amount of passenger money, as per

way-bill of August 31st. If the libellants had made their trip in safety, the gross amount of the passage money would have been say $1,560; and the profit of the company would have been that sum less the expenses of the ship; and for this profit the respondent is liable.

Taking this view of the case, the account would stand thus:

Amount originally received - - - - - -		$1,560 00
But from this sum deduct amount of passage money refunded - - - - - - - -	$870 00	
Expenses of ship, say three days:		
Officers - - - - - - -	96 64	
Provisions - - - - - - -	46 12	
Coal - - - - - - - -	144 00	
Insurance - - - - - - -	29 62	
		$1,186 38
		$373 62
But the ship, having returned to port, was detained there four days, and was subjected to other expenses, which should be charged to respondent as incident to collision, to wit:		
Wharfage, 3 days - - - - - -	$18 00	
Insurance, 1 day - - - - - -	9 88	
Expenses of officers, 1 day - - -	32 21	
Coal, 1 day - - - - - - -	48 00	
Interest, 1 day - - - - - -	85 34	
		$193 43
		$567 05

The libellants by this account (D) claim interest on the value of the vessel in lieu of freight, which is not claimed specifically.

It is not shown in evidence, nor does it appear by this account, or otherwise, that the freight taken by the Osprey on her next succeeding trip, to wit, on the third day of September, 1850, was not the same as that on board at the time of the accident. The libellants have furnished the account of loss by passengers; but whether the freight was increased or decreased, we are left in doubt. In a matter where the libellants could have shown the exact state of things, presumptions should be excluded.

The claim for interest on cost, as freight, is disallowed.

The claim by exhibit D amounts, in the aggregate, to $1,184 39. This sum I have reduced to $567 05; which sum I report as lost by reason of refunding to passengers and demurrage.

Item No. 4, counsel fees $400.

The commissioner submits, that the allowance of this claim is purely within the discretion of the court, and does not form any part of the reference to him.

No objection being made to the other claims, the following table is

submitted as a recapitulation of the various claims allowed as damages, viz:

Vaughn & Lynn	$23 73	
Thomas F. Kohler & Co.	8 19	
George Landell & Son	35 17	
Cox & Lynn	78 75	
Merrick & Son	535 83	
Demurrage and loss	567 05	
		$1,248 72
Add interest from September 3, 1850, eighteen months, twenty-three days		117 10
		1,365 82
Costs		157 76
	Which sum of	$1,520 58

I now report as the basis of a final decree.

All which is respectfully submitted.

CHAS. F. HEAZLITT,
Commissioner.

March 19, 1852.

Depositions taken upon reference, February 17, 1852.

B. H. Bartol, sworn. I am engineer in the establishment of Merrick & Son; I have charge of the manufacturing department; I remember some repairs done to the Osprey, in consequence of collision.

Question. Is that a correct statement? (handing bill A.) [Objected to.]

Answer. It is; the work was actually performed, and at those prices. The bill is for damages actually occasioned by the collision.

Cross examined.

This bill was rendered to the company at the time the work was done. This identical bill was rendered, and was not paid.

I am not a member of the firm of Merrick & Son, and have no interest in that bill at all. The bill includes nothing else but what was necessary, and the direct consequence of collision.

Re-examined.

This bill is part of an outstanding account, on which nothing has been paid.

John L. Lynn, sworn. I am one of the firm of Cox & Lynn; we furnished certain pine and plank for repairs to the Osprey, made necessary by collision; the materials referred to in the other bills were furnished by our order, and were made necessary by the collision. Bill marked B.

Cross examined.

These bills were for nothing else than the damages occasioned by collision; I have no recollection of this bill having been paid; we did work before for the company; these bills were rendered to the company at the time.

Ephraim Lummis, sworn. I am engaged as book-keeper with Vaughan & Lynn; I remember Vaughan & Lynn making repairs on the steamer Osprey. Bill marked C is a correct statement; it was furnished at the time.

Cross examined.

I believe these repairs were necessary by collision. This bill is paid.

Adjourned till Thursday next, 4 p. m.

Thursday, February 19, 1852.

Mr. Campbell being engaged, adjourned to meet on notice.

Saturday, February 28, 1852.

Peter A. Jordan, sworn. I was in the employ of the company in August and September, 1850, as clerk; I know of the return of the Osprey after the accident; she came up to Lombard street wharf, the usual place; she arrived back on Sunday, and went either Wednesday or Thursday, and during that time she was detained by her repairs; the repairs were not completed when she sailed again; she started with the workmen on board. The paper I have in my hand is an account for three days' demurrage, September 3, 1850. I believe this statement to be correct, and is stated from the books of the company, and my knowledge of the expenses. I kept the books principally at that time. Paper marked D.

When the Osprey sailed on the 31st August, the cabin passengers amounted to $1420, and steerage $140 = $1560. This was all paid in advance. She sailed again September 3, with cabin passengers amounting to $800, steerage $70 = $870. The difference in money between these two sums was returned to the passengers—a great deal, if not all, on the day she returned, Sunday, and was returned in consequence of the vessel putting back.

I can't say whether we had any new passengers on the 3d; I think very few, if any, because there was no certainty as to day of sailing. The difference in amount of passage money was caused by the accident.

The amounts in this paper, pay of officers, &c., correspond with my knowledge of their usual pay.

I have no knowledge of the cost of the ship, other than as it stands on the books.

I should say that the Osprey was worth at least $51,202 56, as per statement.

2089.

The vessel was at that time doing a prosperous business, making money. I know the rate of wharfage—$3 a wharf. She occupied two wharves, $6 per day. I know her to be insured at the amount stated, $3606 per annum.

The charges herein for coal and provisions correspond with the actual average expenses of the ship. Paper annexed, marked D.

A.

Steamer Osprey, and owners, to Merrick & Son.

For repairs on Osprey, wheels, &c., when damaged, and finishing same after return from Charleston.

Sept. 30	24 oak buckets	-	75	$18 00	
	Wrt. iron and paddle wheel cams	$11 00			
	Cucler	9 88			
	50 hook bolts and nuts	1 87½			
	40 " plates	1 31			
	1 brace	39			
	Rivets	1 18			
Oct. 30	1 brace	40			
	1 " repaired	1½			
	Rivets	47			
	30 hook bolts	1 12½			
	20 backing plates	79			
		28 43½	*a* 5	142 17	
	Casting buckets	5 20	*a* 3½	18 20	
	124 bolts and nuts	1 45	15	21 75	
	250 washers		2	5 00	
	Boiler plate, on wheels	1 30	6	7 80	
	25 lbs. sheet lead	-	6	1 50	
	Tools: 1 hand ham'r $1 50				
	2 pr. tongs 3 00				
	1 sledge 3 00				
	2 cold chisels 2 00	-	-	9 50	
	Labor in shop and on board, including smith's fires, reduced to day's work	150 75	2	301 50	
	Cartages	-	-	6 70	532 12
	Less 1353 lbs. old iron, *a* 1½	-	-	-	20 29
					$511 83
	Add, running engine at night, in shop, 24 hours	-	-	-	24 00
					$535 83

A. C. F. H.

B.

Damages done by barque Delaware to steamship Osprey.

To John F. Kohler & Co.

1850, Sept. 2.	6 lb. nails, 50; 3 lb. camp hinges, 1 20		$1 50
13.	16 brass screws, 64; 20 lb. nails, $1 00		1 64
	7 lbs. brass hinges, $2 80; 1 doz. brass screws, 25 - - - -		3 05
	1 pr. brass knobs, 50; 6 dozen brass screws, $1 50 - - - -		2 00
			$8 19

This is correct.

COX & LYNN.

Steamship Osprey, to Geo. Landell & Son, Dr.

1850, Sept. 2,	to 20 feet oak boards, 2½ - -	$0 50	
	362 ft. yellow pine plank, 2½ -	9 05	
	46 ft. ash plank, 2¼ - - -	1 15	
	520 ft. worked cypress board, 3½	18 71	
	34 ft. ⅝ pannel boards, 3½ -	1 19	
	Carting - - - - -	0 80	
			$31 10
	10, to 56 ft. yellow pine plank, 2½ - -		1 40
	11, to 38 ft. yellow pine scantling, 2½ -	0 95	
	Carting - - - - -	1 00	
			1 95
	12, to 29 ft. yellow pine plank, 2½ - -		72
			$35 17

This bill is correct for repairs of damage done by barque Delaware.

COX & LYNN.

Steamer Osprey and owners, to Cox & Lynn, Dr.

For labor to repair wheel-house, guards, &c., damaged by the barque Delaware running into her:

Sept.	2.	6 days at $2 per day.
	3.	6 " " "
	11.	6 " " "
	12.	4 " " "
	26.	2 " " "
	27.	2 " " "
		4 days at $1 75 per day.
		4 " " "

3 days at $1 75 per day.
2 " " "

13 days at $1 75 per day	$22 75
28 days at $2 per day	56 00
	$78 75

C.

Steamship Osprey and owners, (repairing damages,) to Vaughan & Lynn, Dr.

1850, Sept. 4, to 7 days work at $2 12	$14 87½
½ " " 75	37½
66 ft. oak plank and stentions, 3	1 98
cartage	75
king post and turning	5 00
6 spikes	75
	$23 73

D.

Account of three days' demurrage of steamship Osprey, occasioned by collision with barque Delaware.

Pay of officers and crew	$96 94
Provisions for officers, crew, and passengers	46 12
Coal for 24 hours, ½ ton per hour, 12 tons, at $4 per ton	48 00
Wharfage, 3 days, at $6	18 00
Insurance, 3 days, at $3,606 00 per annum	29 62
Interest on cost, $51,202 56, 3 days	256 01
	$494 39

Sept. 3, 1850. Account of loss by passengers occasioned by above named collision.

Aug. 31, 1850.	Amount of way bill, cabin passengers	$1,420 00	
	Amount of way bill, steerage passengers	140 00	$1,560 00
Sept. 3, 1850.	Amount of way bill, cabin passengers	$800 00	
	Amount of way bill, steerage passengers	70 00	870 00
	Loss		$690 00

And thereupon the proctors for the said libellants make and file an exception to the said report, in the words following, to wit:

The counsel for the Osprey except to the report of the commissioner, in disallowing the claim for counsel fees.

Whereupon, afterwards, to wit, on the 26th day of March, A. D. 1852, it is ordered by the court, that the said exception be dismissed, the subject matter thereof not being referred to the commissioner by the decree of the court, and that said report be in all things confirmed; and it is further ordered, that the said libellants do recover from the said respondents the sum so reported, with costs.

And thereupon the said respondents pray leave to appeal from the decree aforesaid, to the next circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit; and the same is allowed on security being given.

UNITED STATES,
Eastern district of Pennsylvania.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the district court of the United States, in and for the eastern district of Pennsylvania, in a certain plea, civil and maritime, lately depending, wherein the Philadelphia and Atlantic Steam Navigation Company is the libellant, against the barque Delaware, Palmer and others, respondents.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at Philadelphia, this thir-
Seal of U. S. D. C. tieth day of March, A. D. 1852, and in the seventy-sixth year of the independence of the said United States.

THOMAS L. KANE,
Clerk district court, U. S.

Whereupon, afterwards, to wit, on the thirteenth day of September, A. D. one thousand eight hundred and fifty-two, all and singular the matters being duly considered, and the arguments of the several proctors being heard, the court make and pronounce their opinion and decree in the words following, to wit:

THE PHILADELPHIA and Atlantic Steam Navigation Company
vs.
THE BARQUE DELAWARE.
} Appeal in admiralty.

JONATHAN PALMER and others, owners of barque Delaware,
vs.
THE STEAMSHIP OSPREY.
} Cross libels for collision.

Taking all the other circumstances of these cases together, and omitting the fact of almost total darkness, and that the barque could see th

2011.

steamboat, while the steamboat could not see the barque, the steamboat would have clearly been held liable for the damages of this collision. It is true, there is no law requiring vessels, navigating the high sea after night, to carry signal lights, and I concur with the district court that it is much to be regretted.

The case before us is briefly this: A steamboat and a sailing vessel are meeting one another, in a very dark night, in the Delaware bay, six or seven miles within the capes; the barque has the wind free; they are approaching each other at the rate of sixteen, or, at the lowest calculation, fifteen miles an hour, and therefore approximate in a right line, at the rate of a mile in four minutes. The steamboat has three lights out; the barque has none. The barque sees the steamboat approach; sailing before the wind, she has it in her power to give the steamer a wide berth, and obviate all possible danger of collision.

Now, if the steamer had the same opportunity of observing the course of the barque, the latter, knowing this fact, would have a right to expect a consequent caution on the part of the steamer. But I think it is plain, from the testimony, that the light shown by the barque was too late to be of any benefit, or to warn the steamer of its approach, till the very moment of the collision. The warning given of the approach of the barque, by her sails intercepting the light from the light-house, like that of the lamp from the barque, was also too late, as well as too uncertain, to justify the steamboat in taking any other means of escaping a collision than those she did take. The order to starboard the helm, before stopping the boat and reversing her engine, may have been wrong, and it may be true that their latter orders were not fully executed at the time of the collision. It may be true, also, that the order of the barque to starboard her helm, and disregard that of the steamboat captain to port it, was correct; and the only way of avoiding a collision which would have destroyed the barque. But these considerations cannot affect the case. It was the fault of the barque and not of the steamboat, that the vessels were brought into such proximity that such mistakes might be made in the dark, where the pilot of the steamboat could neither judge of the distance between the approximating vessels, the ratio of their approach, or the relative angle of their respective courses. It was the duty of the barque, which could see, to give a wide berth to the boat, which could not see, and not to leave it in the power of her pilot, by a mistake, in a moment of surprise, to cause a collision.

The rule of passing to the right, or porting the helm, in cases of vessels meeting on the same line, is founded on the supposition that each party can see the other. But where one is blind, and the other knows it, he should not put himself within reach of injury by any mistake of the blind, or run over him, or knock him down, for not observing the rule.

The court cannot establish a rule to bind vessels, navigating the high sea after night, to carry signal lights; but where one party does this, and the other does not, we can and will treat (in a case cœteris pari-